



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on September 12, 2023, at 1:00 p.m. in room 149 Capitol Annex.
ARRS Tentative Agenda - [577](#) [Online agenda is updated as needed](#)

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, September 12, 2023 at 1 p.m.
Annex Room 149**



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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

**Division of Student and Administrative Services
KHEAA Grant Programs**

- 011 KAR 005:001. Definitions pertaining to 11 KAR Chapter 5.
- 011 KAR 015:040. Kentucky Educational Excellence Scholarship award determination procedure.
- 011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

EDUCATION PROFESSIONAL STANDARDS BOARD

Teaching Certificates

- 016 KAR 002:240E. Interim certificate. (Filed with ordinary) ("E" expires 3-25-2024)

SECRETARY OF STATE

Safe at Home Program

- 030 KAR 010:010E. Definitions for 30 KAR Chapter 10. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:020E. Application and certification. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:030E. Notification of expiration and recertification in the Safe at Home Program. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:040E. Cancellation, appeal, and withdrawal. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:050E. Application assistant training and designation. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:060E. Release of participant information to criminal justice officials or agencies. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:070E. School enrollment and record transfers. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:080E. Substitute address. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:090E. Exercise of program participant's privileges. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:100E. Attaining age of majority. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:110E. Service of process. (Filed with ordinary) ("E" expires 3-25-2024)
- 030 KAR 010:120E. Recognition of certification in other state. (Filed with ordinary) ("E" expires 3-25-2024)

GENERAL GOVERNMENT CABINET

**Kentucky Registry of Election Finance
Reports and Forms**

- 032 KAR 001:020. Statement of spending intent and appointment of campaign treasurer.
- 032 KAR 001:030. Campaign Finance Statements.
- 032 KAR 001:046. Repeal of 32 KAR 1:045 and 32 KAR 1:070.
- 032 KAR 001:050. Political organization registration.

PERSONNEL BOARD

Board

- 101 KAR 001:365E. Appeal and hearing procedures. (Filed with ordinary) ("E" expires 4-6-2024)

KENTUCKY COMMISSION ON HUMAN RIGHTS

Human Rights

- 104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.
- 104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.
- 104 KAR 001:050. Standards and procedures for providing equal employment opportunities.
- 104 KAR 001:080. Guidelines on fair housing.
- 104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

GENERAL GOVERNMENT CABINET

**Department of Military Affairs
Military Burial Honors Program**

- 106 KAR 004:020. Commonwealth of Kentucky Military Burial Honor Guard Trust Fund and Military Burial Honor Guard.

BOARDS AND COMMISSIONS

Kentucky State Board of Accountancy

- 201 KAR 001:050. License application. (Deferred from August)

Board of Pharmacy

- 201 KAR 002:020. Examination.
- 201 KAR 002:050. Licenses and permits; fees.
- 201 KAR 002:076. Compounding.
- 201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.
- 201 KAR 002:205. Pharmacist-in-charge.
- 201 KAR 002:225. Special limited pharmacy permit- Medical gas.
- 201 KAR 002:240. Special limited pharmacy permit- Charitable.
- 201 KAR 002:320. Requirements for manufacturers and virtual manufacturers.
- 201 KAR 002:340. Special limited pharmacy permit- clinical practice.
- 201 KAR 002:390. Requirements for third-party logistics providers.

Board of Social Work

- 201 KAR 023:160E. Temporary permission to practice. (Filed with ordinary) ("E" expires 3-24-24)

Boxing and Wrestling Commission

- 201 KAR 027:005. Definitions for 201 KAR Chapter 27.
- 201 KAR 027:008. License requirements and fees.
- 201 KAR 027:011. General requirements for boxing and kickboxing shows.
- 201 KAR 027:012. General requirements for wrestling shows.
- 201 KAR 027:016. General requirements for mixed martial arts matches, shows, or exhibitions.

INDEPENDENT ADMINISTRATIVE BODIES

Kentucky Housing Corporation

- 202 KAR 002:020E. Rural Housing Trust Fund. (Filed with ordinary) ("E" expires 3-31-24)

Board of Emergency Medical Services

- 202 KAR 007:555. Ground agencies. (Filed with Emergency)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 001:122. Importation, possession, and prohibited aquatic species.
- 301 KAR 001:201. Taking of fish by traditional fishing methods.
- 301 KAR 001:410. Taking of fish by nontraditional fishing methods.

DEPARTMENT OF AGRICULTURE

Amusement Rides

- 302 KAR 016:010. Business registration and permit for amusement rides or attractions.
- 302 KAR 016:020. Inspection and operation of amusement rides or amusement attractions.
- 302 KAR 016:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.
- 302 KAR 016:071. Repeal of 302 KAR 16:070.
- 302 KAR 016:072. Notification of occurrence involving an amusement ride or attraction.
- 302 KAR 016:111. Violations, civil penalties, revocations, and suspensions of permits for amusement rides or attractions.

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- 302 KAR 022:150. Cervids.

Grain

- 302 KAR 033:010. Grain dealers and grain warehouse operators.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Air Quality

- 401 KAR 051:010. Attainment status designations.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Justice

Capital Punishment

- 501 KAR 016:310. Pre-execution medical actions. (Comments Received; SOC due 08-15-2023)

Law Enforcement Council

- 503 KAR 001:140E. Peace office, telecommunicator, and court security officer professional standards. (Filed with ordinary) ("E" expires 3/23/2024)

Department of Juvenile Justice

Child Welfare

- 505 KAR 001:110. Intake and orientation.
- 505 KAR 001:240. Dietary services.
- 505 KAR 001:250. Drug screening and testing.
- 505 KAR 001:260. Education.
- 505 KAR 001:270. Grievances.
- 505 KAR 001:280. Hair and grooming.

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505 KAR 001:290. Juvenile allowance and work detail.
505 KAR 001:300. Juvenile records and information.
505 KAR 001:310. Leave, releases, and furloughs.
505 KAR 001:320. Library services.
505 KAR 001:330. Personal property, dress, and clothing and bedding supply.
505 KAR 001:340. Recreation.
505 KAR 001:350. Religious practice.
505 KAR 001:360. Searches.
505 KAR 001:370. Treatment.
505 KAR 001:380. Mail, visiting, and telephone use.
505 KAR 001:390. Juvenile Accounts and Youth Activity Fund Account.
505 KAR 001:400. Behavior management and progressive discipline.
505 KAR 001:410. Isolation and protective custody.
505 KAR 001:420. Youthful offenders.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

School Terms, Attendance and Operation

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics.

PUBLIC PROTECTION CABINET

Horse Racing Commission

Licensing

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809 KAR 001:003E. Occupational licenses. (Filed with ordinary) ("E" expires 4/5/2024)
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809 KAR 010:002E. Standards for sports wagering. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:003E. Technical requirements and oversight. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:004E. Sports wagering accounts. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:005E. Licensed premises. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:006E. Audit and internal control standards. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:007E. Responsible gaming and advertising. (Filed with ordinary) ("E" expires 4/5/2024)
809 KAR 010:008E. Disciplinary actions and hearings. (Filed with ordinary) ("E" expires 4/5/2024)

Licensing

810 KAR 003:010E. Licensing of racing associations. (Filed with ordinary) ("E" expires 4/5/2024)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

State Health Plan

900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) (Amended After Comments) (Deferred from August)

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review. (Filed with Emergency) (Amended After Comments) (Deferred from August)
900 KAR 006:080E. Certificate of Need emergency circumstances. ("E" expires 02-13-2024) (Filed with Ordinary) (Comments Received, SOC due 08-15-2023)
900 KAR 006:080. Certificate of Need emergency circumstances. (Filed with Emergency)

Department for Public Health

Health Services and Facilities

902 KAR 020:300. Operation and services; nursing facilities.
902 KAR 020:500. Medical reserve corps.

Radiology

902 KAR 100:019. Standards for protection against radiation.
902 KAR 100:040. General provisions for specific licenses.
902 KAR 100:050. General licenses.
902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.
902 KAR 100:065. Reciprocal recognition.
902 KAR 100:165. Notices, reports, and instructions to employees.
902 KAR 100:185. Standards for protection against radiation from radioactive materials.
902 KAR 100:195. Licensing of special nuclear material.
902 KAR 100:200. Licenses and radiation safety requirements for irradiators.

Department for Medicaid Services

Medicaid Services

907 KAR 001:025. Payment for services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.
907 KAR 001:038. Hearing Program coverage provisions and requirements. (Filed with Emergency) (Not Amended After Comments)
907 KAR 001:126. Dental services' coverage provisions and requirements. (Filed with Emergency) (Not Amended After Comments)
907 KAR 001:632. Vision program coverage provisions and requirements. (Filed with Emergency) (Amended After Comments)

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Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:020. Financial requirements.

921 KAR 003:095. Elderly Simplified Application Project or “ESAP”.

Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment. (“E” expires 02-29-2024. (Filed with Ordinary) (Emergency Amended After Comments) (Deferred from August)

Day Care

922 KAR 002:245. Kentucky infant and toddler credential. (Deferred from August)

3. REGULATIONS REMOVED FROM SEPTEMBER’S AGENDA

BOARDS AND COMMISSIONS

Board of Nursing

201 KAR 020:700. Medication aide training programs and credentialing of medication aides. (Comments Received; SOC ext. due 09-15-2023)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

505 KAR 001:010. Definitions. (Comments Received, SOC ext. due 09-15-2023)

505 KAR 001:100. Admissions. (Comments Received, SOC ext. due 09-15-2023)

505 KAR 001:180. Day treatment admissions. (Comments Received, SOC ext. due 09-15-2023)

505 KAR 001:185. Day treatment programs. (Comments Received, SOC ext. due 09-15-2023)

505 KAR 001:210. Restraints and control methods. (Filed with Emergency) (Comments Received, SOC ext. due 09-15-2023)

505 KAR 001:220. Transportation of juveniles. (Filed with Emergency) (Comments Received, SOC ext. due 09-15-2023)

PUBLIC PROTECTION CABINET

Horse Racing Commission

General

810 KAR 002:100. Self-exclusion. (Amended After Comments) (Deferred from September)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community-Based Services

Child Welfare

922 KAR 001:360. Private child care placement, levels of care, and payment. (Filed with Emergency) (Comments Received, SOC ext., due 09-15-2023)

Day Care

922 KAR 002:255. Kentucky school-aged youth development credential. (Comments Received, SOC ext., due 09-15-2023)

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; 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 next *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 the month of 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. Filing deadlines are established in KRS 13A.050.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation is 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
31 KAR 4:196E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets November 7, 2023, as the date for the next regular election, while KRS 117.066(3)(i), enacted through 2023 Ky. Act Ch. 74, sec. 2, requires that any petition to consolidate precincts and precinct election officers submitted from a county board of elections to the State Board of Elections include the number of parking spaces available at the location and a determination as to whether the location has sufficient parking spaces. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 4:196E. Consolidation of precincts and precinct election officers.

EFFECTIVE: August 15, 2023

RELATES TO: KRS 117.066[~~118.710, 118.720, 118.730~~]

STATUTORY AUTHORITY: KRS 117.015(1)(a)[~~117.066(3)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of Elections may request, at any time, from any county, a resubmission of a timely filed petition to consolidate precincts and precinct election officers if the petition is found to be deficient or incomplete upon review by the State Board of Elections.

Section 2. The submission of Form SBE 74 shall be accompanied by no less than one (1) map scalable to a sheet of 8.5 in. x 11 in. [inch] paper of the county showing the location of any consolidated precincts comprising a county-wide vote center.

Section 3. Incorporated by Reference. (1) "Petition to Consolidate Precincts and Precinct Election Officers", Form SBE 74,

08/2023[04/2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: August 15, 2023

FILED WITH LRC: August 15, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2023, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This 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 September 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment revises the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote to include information about parking, as required by KRS 117.066(3)(i).

(b) The necessity of this administrative regulation: This administrative regulation amendment is necessary given that 2023 Ky. Acts Ch. 74, sec. 2 requires the inclusion of parking information on the form submitted by counties to the State Board for the consolidation of precincts and precinct officials under KRS 117.066.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2.

(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 amendment revises the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote to include information about parking, as required by KRS 117.066(3)(i).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary given that 2023 Ky. Acts Ch. 74, sec. 2 requires the inclusion of parking information on the form submitted by counties to the State Board for the consolidation of precincts and precinct officials under

KRS 117.066.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all county boards of election that wish to consolidate precincts and precinct election officers.

(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 administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

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? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections 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. KRS117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2., requires and authorizes the actions 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? It is not expected or intended that this administrative regulation will generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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 State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATEMENT OF EMERGENCY
902 KAR 45:190E

This emergency administrative regulation is being promulgated to implement the requirements of 2023 Ky. Acts ch. 78. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to immediately begin the process of regulating delta-8 tetrahydrocannabinol and any other hemp-derived substances. This emergency administrative regulation is necessary to implement 2023 Ky. Acts ch. 78, which requires the cabinet to promulgate an emergency administrative regulation with applicability to covered products that implements Executive Order 2022-799, prohibits the sale of intoxicating products to anyone under twenty-one (21) years of age, sets the laboratory testing requirements, and requires products be labeled in accordance with the act and KRS 217.037. This emergency administrative regulation will not be filed with an ordinary administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Emergency Amendment)

902 KAR 45:190E. Hemp-derived cannabinoid products; packaging and labeling requirements.

EFFECTIVE: August 1, 2023

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, [217.155,] 260.850, 438.305(4), 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. KRS 217.155 allows the cabinet or its duly authorized agent free access at reasonable times for the purpose of inspection any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the registration, processing, and manufacturing procedures [process] to utilize hemp-derived cannabinoid products in foods and cosmetics, the labeling and packaging requirements for products containing hemp-derived cannabinoids, the requirements for retail sale of hemp-derived cannabinoid products [cannabinoid], and methods for use of hemp-derived cannabinoid as an additive to food products.

Section 1. Definitions. (1) "Adult-use cannabinoid" means tetrahydrocannabinols, tetrahydrocannabinolic acids that are artificially or naturally derived, delta-8 tetrahydrocannabinol, delta-9 tetrahydrocannabinol, the optical isomers of delta-8 tetrahydrocannabinol or delta-9 tetrahydrocannabinol, and any artificially derived cannabinoid that is reasonably determined to have an intoxicating effect.

(2) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from a plant of the genus Cannabis.

(3) "Approved source" means:

(a) A Kentucky hemp grower [processor,] or handler licensed by the Kentucky Department of Agriculture, or an out-of-state hemp

grower [processor,] or handler who is duly authorized to produce hemp under the laws of the applicable jurisdiction; or

(b) A hemp product manufacturer or processor permitted by the Kentucky Department for Public Health.

(4) [(2)] "Cabinet" is defined by KRS 217.015(3).

(5) "Cannabidiol" or "CBD" is defined by KRS 217.039(1)(a).

(6) [(3)] "Cannabinoid" means a [non-intoxicating-] compound found in the hemp plant Cannabis sativa.

(7) "Child-resistant" means packaging that is:

(a) Designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for adults to use properly; and

(b) Resealable to maintain this effectiveness for children through multiple openings for any product intended for more than a single use or containing multiple servings.

(8) [(4)] "Cosmetic" is defined by KRS 217.015(7).

(9) [(5)] "Department" means the Kentucky Department for Public Health.

(6) "Food service establishment" is defined by KRS 217.015(21).

(10) [(7)] "Hemp" is defined by KRS 260.850(5).

(11) [(8)] "Home-based processor" is defined by KRS 217.015(56).

(12) "Imminent health hazard" is defined by KRS 217.015(24).

(13) [(9)] "Person" is defined by KRS 217.015(32).

(14) "Proof of age" is defined by KRS 438.305(4).

(15) "Revocation" means the permit to operate is cancelled by the department.

(16) "Tentatively identified compounds" or "TIC" means compounds detected in a sample using gas chromatography mass spectrometry that are not among the target analytes for the residual solvent analysis.

(17) "Topical" means a hemp-derived cannabinoid product intended to be applied to the skin or hair.

Section 2. Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products [Permits].

(1) A person located in Kentucky seeking to process, manufacture, store, or distribute hemp-derived cannabinoids shall be permitted by the cabinet [a hemp-derived ingestible or cosmetic cannabinoid product shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, DFS-260, incorporated by reference in 902 KAR 45:160, to the department].

(2) The permit shall be:

(a) Nontransferable in regard [regards] to person or address; [and]

(b) Posted in a conspicuous place in the facility; and

(c) Renewed annually.

(3) The fee [shall be] paid in accordance with:

(a) 902 KAR 45:180, for a food processing establishment;

(b) 902 KAR 45:180, for a cosmetic manufacturer; and

(c) 902 KAR 45:110, Section 1(3) and (6), for a food service establishment.

(4) All processors and manufacturers shall meet:

(a) The applicable requirements of 902 KAR 45:160 Section 2(1)(u); and

(b) The requirements of 902 KAR 45:160, Sections 4, 5, 6, 7, 8, 9, 10, 11, and 14.

(5) [Ingestible.] Hemp-derived cannabinoid products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

(6) An adult-use hemp-derived cannabinoid processing or manufacturing facility, or distributor, shall not employ anyone under twenty-one (21) years of age.

(7) A hemp-derived cannabinoid processing or manufacturing facility shall not treat or otherwise adulterate a cannabinoid product, concentrate, cannabinoid extract, or edible product with:

(a) Any non-cannabinoid additive that increases toxicity or additive potential;

(b) Caffeine;

(c) Nicotine; or

(d) Other chemicals that may increase carcinogenicity or cardiac effects.

(8) All edible products shall be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(9) Only permitted hemp-derived cannabinoid processing facilities shall perform cannabinoid extraction, conversion, catalyzation, or distillation processes.

(10) A hemp-derived cannabinoid processor or manufacturer shall only use the following solvents: water, vegetable glycerin, vegetable oils, animal fats, butane, propane, carbon dioxide, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless approved by the cabinet.

(11) A hemp-derived cannabinoid processor using hydrocarbon-based solvents shall use only such solvents of ninety-nine (99) percent or better purity. Nonhydrocarbon-based solvents shall be food grade.

(12)(a) A current copy of safety data sheets and a receipt of purchase for all solvents used or to be used in an extraction process shall be kept on file;

(b) The processor shall retain in its facility a certificate of analysis (COA) from the original manufacturer with purity and impurity limits and results for all solvents used; and

(c) Certificates shall be retained for two (2) years.

(13)(a) Solvents shall be collected and stored in medical-grade containers when practical to maintain purity; and

(b) Solvent containers shall be replaced or safely purged, cleaned, and sanitized periodically.

(14) Extraction processes shall take place in an environment properly ventilated to control all sources of ignition where a flammable atmosphere is, or could be, present.

(15) Cannabinoid processing facilities shall not use pressurized canned flammable fuel, such as butane intended for use in outdoor activities, handheld torch devices, and refillable cigarette lighters.

(16) Cannabinoid processing facilities using carbon dioxide shall have equipment and facilities approved by local fire code officials, if applicable.

(17) Processes using flammable gas or flammable liquid shall have leak or gas detection measures, or both.

(18) A permittee shall not use dimethylsulfoxide (DMSO) in the manufacture of hemp-derived cannabinoid products, and possession upon the permitted premises is prohibited.

(19)(a) A hemp-derived cannabinoid manufacturer shall not use non-cannabinoid derived inactive ingredients not listed in the federal Food and Drug Administration inactive ingredient database at <https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm> in the manufacture of hemp-derived cannabinoid product and concentrate intended for use through a vaporizer delivery device or pressurized metered dose inhaler; and

(b) Any non-cannabinoid derived inactive ingredients used shall be less than or equal to the concentration listed in the database.

(20) The following substances shall be prohibited in hemp-derived cannabinoid extraction intended for inhalation:

(a) Vitamin E acetate (VEA);

(b) Medium-chain triglycerides (MCT);

(c) Polyethylene glycol (PEG);

(d) Propylene glycol (PG or PPG);

(e) 2,3-butanedione (Diacetyl); and

(f) Myclobutanil.

Section 3. Product Sampling and Testing Requirements. (1) Sampling and testing for all hemp-derived cannabinoid products shall be:

(a) Done for each batch or process lot; and

(b) Conducted with representative samples to ensure all batches or process lots are adequately assessed for contaminants, and that the hemp-derived cannabinoid profile is consistent throughout.

(2) Testing shall only be performed on the final product equivalent to what will be consumed.

(3) Samples shall be collected using appropriate aseptic techniques.

(4) A hemp-derived cannabinoid processing or manufacturing facility shall assign each batch or process lot a unique batch or lot number that shall be:

(a) Documented and maintained in the processing and

manufacturing facility for at least two (2) years and available to the department upon request;

(b) Provided to the individual responsible for taking samples; and

(c) Included on the product label.

(5) Sample size, handling, storage, and disposal.

(a) For hemp-derived cannabinoid concentrates, extracts, and edible products, samples shall consist of enough samples from the batch or process lot to ensure that the required attributes in the products are homogenous and consistent with the testing facility's accredited sampling policies and procedures.

(b) A hemp-derived cannabinoid processing or manufacturing permittee shall prepare sampling policies and procedures that contain the information necessary for collecting and transporting samples from hemp-derived cannabinoid concentrates, extracts, and edible products in a manner that does not endanger the integrity of the sample for any analysis required by this administrative regulation.

(6) Laboratory requirements.

(a) Testing facilities used by the hemp-derived cannabinoid processing or manufacturing facility shall be fully accredited to the standard established by International Organization for Standardization (ISO) 17025 by an International Laboratory Accreditation Cooperation recognized accreditation body.

(b) The testing facility shall:

1. Maintain ISO 17025 accreditation; and

2. Comply with all required analytes standards for the relevant test methods of:

a. Cannabinoids;

b. Microbial impurities;

c. Mycotoxins;

d. Residual pesticides;

e. Heavy metals; and

f. Residual solvents and processing chemicals, if applicable.

(c) Hemp-derived cannabinoid processing or manufacturing facilities shall maintain on file proof of a valid certificate of accreditation for the laboratory completing product testing that:

1. Is issued by an accreditation organization; and

2. Attests to the laboratory's competence to perform testing, including all the required analytes for the relevant test methods required.

(7) Testing requirements.

(a) A processing or manufacturing facility shall test every batch or process lot of hemp-derived cannabinoid concentrate, extract, or edible products for sale or distribution prior to sell or transfer.

(b) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested for:

1. Cannabinoids;

2. Microbial impurities;

3. Mycotoxins;

4. Residual pesticides;

5. Heavy metals; and

6. Residual solvents and processing chemicals, if applicable.

(c) Infused hemp-derived cannabinoid products may not require additional testing for microbial impurities, mycotoxins, residual pesticides, heavy metals, or processing chemicals, as applicable, if the cannabinoid concentrate used to make an infused product was:

1. Tested for microbial impurities, mycotoxins, residual pesticides, heavy metals, or processing chemicals in compliance with this administrative regulation; and

2. Test results indicate the batch or process lot was within established limits.

(d) An infused hemp-derived cannabinoid product shall be tested if the addition of ingredients or processing practice create a reasonable or foreseeable microbial impurity, mycotoxin, residual pesticide, heavy metals, or processing chemicals hazard.

(e) All vaporizer delivery device or pressurized metered dose inhaler cartridge batches or process lots shall be tested for Vitamin E Acetate.

(f) In accordance with KRS 217.039, all applicable certificates of analysis shall accompany the final product.

(8) Standards for hemp-derived cannabinoid testing.

(a) A testing facility shall establish a limit of quantitation of one

(1) milligram per gram (mg/g) or lower for all adult-use hemp-derived cannabinoids analyzed and reported.

(b) A testing facility shall report the result of the hemp-derived cannabinoid testing on the certificate of analysis, that includes at minimum:

1. Total tetrahydrocannabinol concentration, calculated in accordance with paragraph (c) of this subsection and reported in percentages;

2. Tetrahydrocannabinol-A concentration;

3. Total CBD concentration, calculated in accordance with paragraph (d) of this subsection and reported in percentages;

4. CBD-A concentration;

5. Milligrams per serving for total tetrahydrocannabinol and total CBD, as applicable;

6. Milligrams per package for total tetrahydrocannabinol and total CBD, as applicable; and

7. The results of all other hemp-derived cannabinoids analyzed on the COA both as a percentage and in either milligrams per gram (mg/g) if by weight or milligrams per milliliter (mg/mL) if by volume.

(c) The following calculation shall be used for calculating total tetrahydrocannabinol:

1. For concentration expressed in weight: Total cannabinoid concentration (mg/g) = (cannabinoid acid form concentration (mg/g) x 0.877) + cannabinoid concentration (mg/g); or

2. For concentration expressed in volume: Total cannabinoid concentration (mg/mL) = (cannabinoid acid form concentration (mg/mL) x 0.877) + cannabinoid concentration (mg/mL).

(d) For hemp-derived cannabinoid infused products, potency shall be reported as milligrams of total tetrahydrocannabinol and total CBD per gram.

(e) Adult-use hemp-derived cannabinoid products shall not contain a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3) on a dry weigh basis.

(f) The serving size from a vaporizer delivery device or pressurized metered dose inhaler shall not exceed one (1) inhalation lasting two (2) seconds per serving.

(9) Standards for microbial impurities.

(a) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested by a testing facility for the presence of microbial impurities.

(b) The sample of inhalable hemp-derived cannabinoid products shall be deemed to have passed the microbial impurities testing if the following conditions are met:

1. Total *Escherichia coli* is not detected above 100 colony forming units/gram;

2. Shiga toxin–producing *Escherichia coli* is not detected in one (1) gram;

3. *Salmonella* spp. is not detected in one (1) gram; and

4. Pathogenic *Aspergillus* species *A. fumigatus*, *A. flavus*, *A. niger*, and *A. terreus* are not detected in one (1) gram.

(c) The sample of non-inhalable hemp-derived cannabinoid products shall be deemed to have passed the microbial impurities testing if the following conditions are met:

1. Total *Escherichia coli* is not detected above 100 colony forming units/gram;

2. Shiga toxin–producing *Escherichia coli* is not detected in one (1) gram; and

3. *Salmonella* spp. is not detected in one (1) gram.

(d) If the sample fails microbial impurities testing, the batch or process lot from which the sample was collected shall not be released for retail sale.

(e) If a sample from a batch or process lot of a hemp-derived cannabinoid concentrate or extract fails microbiological contaminant testing, the batch may be further processed, if the processing method effectively sterilizes the batch.

(f) A batch or process lot that is sterilized in accordance with paragraph (e) of this subsection shall be sampled and tested in accordance with this administrative regulation, if not otherwise required for that product, for microbiological contaminants, residual solvents, and processing chemicals.

(g) A batch or process lot that fails microbiological contaminant testing after undergoing a sterilization process in accordance with paragraph (e) of this subsection shall be destroyed in a manner that

renders the batch or process lot denatured and unusable.

(10) Standards for mycotoxin testing.

(a) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested by a testing facility for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A.

(b) A batch or process lot shall be deemed to have passed mycotoxin testing if the following conditions are met:

1. Total of aflatoxin B1, B2, G1, and G2 does not exceed twenty (20) microgram per kilogram (µg/kg) of substance; and

2. Ochratoxin A does not exceed twenty (20) µg/kg of substance.

(c) A batch or process lot that fails mycotoxin testing in accordance with this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(11) Standards for testing residual pesticides.

(a) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested by a testing facility for the following residual pesticides and shall not exceed the maximum allowable concentration for each:

Residual pesticide	Chemical Abstract Service (CAS) assigned number	Maximum allowable concentration stated in parts per million (ppm)
Abamectin	71751-41-2	0.5 ppm
Acephate	30560-19-1	0.4 ppm
Acequinocyl	57960-19-7	2.0 ppm
Acetamiprid	135410-20-7	0.2 ppm
Aldicarb	116-06-3	0.4 ppm
Azoxystrobin	131860-33-8	0.2 ppm
Bifenazate	149877-41-8	0.2 ppm
Bifenthrin	82657-04-3	0.2 ppm
Boscalid	188425-85-6	0.4 ppm
Carbaryl	63-25-2	0.2 ppm
Carbofuran	1563-66-2	0.2 ppm
Chlorantraniliprole	500008-45-7	0.2 ppm
Chlorfenapyr	122453-73-0	1.0 ppm
Chlormequat chloride	7003-89-6	0.2 ppm
Chlorpyrifos	2921-88-2	0.2 ppm
Clofentezine	74115-24-5	0.2 ppm
Cyfluthrin	68359-37-5	1.0 ppm
Cypermethrin	52315-07-8	1.0 ppm
Daminozide	1596-84-5	1.0 ppm
DDVP (Dichlorvos)	62-73-7	0.1 ppm
Diazinon	333-41-5	0.2 ppm
Dimethoate	60-51-5	0.2 ppm
Ethoprophos	13194-48-4	0.2 ppm
Etofenprox	80844-07-1	0.4 ppm
Etoxazole	153233-91-1	0.2 ppm
Fenoxycarb	72490-01-8	0.2 ppm
Fenpyroximate	134098-61-6	0.4 ppm
Fipronil	120068-37-3	0.4 ppm
Flonicamid	158062-67-0	1.0 ppm
Fludioxonil	131341-86-1	0.4 ppm
Hexythiazox	78587-05-0	1.0 ppm
Imazalil	35554-44-0	0.2 ppm
Imidacloprid	138261-41-3	0.4 ppm
Kresoxim-methy	143390-89-0	0.4 ppm
Malathion	121-75-5	0.2 ppm
Metalaxyl	57837-19-1	0.2 ppm
Methiocarb	2032-65-7	0.2 ppm
Methomyl	16752-77-5	0.4 ppm
Methyl parathion	298-00-0	0.2 ppm
Myclobutanil	88671-89-0	0.2 ppm (prohibited at any concentration for inhalation)
Naled	300-76-5	0.5 ppm
Oxamyl	23135-22-0	1.0 ppm
Paclobutrazol	76738-62-0	0.4 ppm
Permethrins (measured	52645-531	0.2 ppm

as the cumulative residue of cis- and trans-isomers)	(54774-45-7 and 51877-74-8)	
Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7(121-21-1, 25402-06-6 and 4466-14-2)	1.0 ppm
Pyridaben	96489-71-3	0.2 ppm
Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

(b) A batch or process lot that fails residual pesticide testing in accordance with paragraph (a) of this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(12) Standards for testing for heavy metals.

(a) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

1. Arsenic, maximum allowable concentration: zero and four-tenths (0.4) ppm;
2. Cadmium, maximum allowable concentration: zero and four-tenths (0.4) ppm;
3. Lead, maximum allowable concentration: one (1) ppm; and
4. Mercury, maximum allowable concentration: one and two-tenths (1.2) ppm.

(b) Hemp-derived cannabinoid concentrate intended for inhalable products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

1. Arsenic, maximum allowable concentration: zero and two-tenths (0.2) ppm;
2. Cadmium, maximum allowable concentration: zero and two-tenths (0.2) ppm;
3. Lead, maximum allowable concentration: zero and five-tenths (0.5) ppm; and
4. Mercury, maximum allowable concentration: zero and one-tenths (0.1) ppm.

(c) A batch or process lot that fails heavy metals testing in accordance with paragraph (a) of this subsection shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(13) Standards for testing residual solvents and processing chemicals.

(a) Hemp-derived cannabinoid concentrate, extract, or edible products shall be tested by a testing facility for residual solvents and processing chemicals, as appropriate, and shall not exceed the maximum allowable concentration for each solvent used according to the table below:

Solvent or processing chemical	CAS assigned number	Maximum allowable concentration stated in parts per million (ppm)
Acetone	67-64-1	1,000 ppm
Benzene*	71-43-2	2 ppm
Butanes, (measured as the cumulative residue of n-butane and iso-butane),	106-97-8 and 75-28-5	1,000 ppm
Ethanol	64-17-5	1,000 ppm

Ethyl Acetate	141-78-6	1,000 ppm
Heptanes	142-82-5	1,000 ppm
Hexanes* (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5 and 79-29-8	60 ppm
Methanol*	67-56-1	600 ppm
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4 and 463-82-1	1,000 ppm
2-Propanol (IPA)	67-63-0	1,000 ppm
Propane	74-98-6	1,000 ppm
Toluene*	108-88-3	180 ppm
Total Xylenes* (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethylbenzene),	1330-20-7 (95-47-6, 108-38-3 and 106-42-3 and 100-41-4)	430 ppm
Any other solvent not permitted for use pursuant to this regulation		None Detected

*Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use, limits have been listed here accordingly.

(b) A processing or manufacturing facility shall be exempt from testing for solvents if the facility:

1. Did not use any solvent listed in paragraph (a) of this subsection;
2. Used a mechanical extraction process to separate cannabinoids; or
3. Used only water, animal fat, or vegetable oil as a solvent to separate the cannabinoids.

(c) If a sample from a batch or process lot fails solvent testing, the batch or process lot may be remediated using procedures that would reduce the concentration of solvents to less than the action level.

(d) A batch or process lot that is remediated in accordance with this subsection shall be:

1. Sampled and tested in accordance with this administrative regulation; and
2. Tested for solvents if not otherwise required for that product under this administrative regulation.

(e) A batch or process lot that fails solvent testing that is not remediated or that if remediated fails testing shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(14) Plant material, such as flower, shake, and plant trim, used to process and manufacture hemp-derived cannabinoid products shall have:

- (a) A water activity (Aw) rate of less than 0.65; and
- (b) A total combined yeast and mold not to exceed 100,000 colony forming units per gram.

(15) Failed testing and remediation.

(a) A sample that fails any initial testing may be reanalyzed by the testing facility.

(b) If the reanalyzed sample passes, the processing or manufacturing facility shall resample the batch or process lot using another accredited testing facility to confirm the result in order for the batch or process lot to pass testing.

(c) A batch or process lot shall fail testing if the testing facility detects the presence of a contaminant in a sample above any limit of detection (LOD) established in this administrative regulation:

1. During an initial test where no reanalysis is requested; or

2. Upon reanalysis as described in this subsection.

(d) If a sample fails a test or a reanalysis, the batch or process lot:

1. May be remediated or sterilized in accordance with this administrative regulation; or

2. If it cannot be remediated or sterilized in accordance with this administrative regulation, it shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

(e) A hemp-derived cannabinoid product batch or process lot shall only be remediated twice. If the batch or process lot fails after a second remediation attempt and the second retesting, the entire batch or process lot shall be destroyed in a manner approved by the cabinet.

(f) A hemp-derived cannabinoid concentrate, extract, or edible product from a batch or process lot that failed testing shall not be combined with another batch or process lot. Mixed products shall be considered adulterated, regardless of the LOD or defect level of the final product.

(16) A processing or manufacturing facility shall:

(a) Have detailed procedures for:

1. Sterilization processes to remove microbiological contaminants; and

2. Reducing the concentration of solvents; and

(b) Document all sampling, testing, sterilization, remediation, and destruction that result from a failed test in accordance with this administrative regulation.

(17) Tentative identification of compounds (TICs).

(a) The testing facility shall provide the processing or manufacturing facility with a complete report of any TICs identified.

(b) The processing or manufacturing facility shall conduct a hazard analysis in accordance with the requirements of 902 KAR 45:160 Section 2(1)(u) to identify and evaluate based on experience, illness data, scientific reports, and other information known or reasonably foreseeable hazards associated with any reported TICs.

(c) The hazard analysis shall include an evaluation of the hazards identified to assess the severity of illness or injury from the hazard and the probability that the hazard will occur in the absence of a preventive control.

(d) A processing or manufacturing facility shall identify and implement preventive controls to provide assurances that any hazards requiring a preventive control shall be significantly minimized or prevented and the hemp-derived cannabinoid product will not be adulterated.

(e) The cabinet may initiate an investigation of a processing or manufacturing facility as a result of a TICs report from a testing facility and may require a processing or manufacturing facility to submit samples for additional testing, including testing for analytes that are not required by this administrative regulation, at the processing or manufacturing facility's expense.

(18) Certificate of analysis.

(a) The testing facility shall:

1. Generate a certificate of analysis (COA) for each representative sample that the testing facility analyzes; and

2. Ensure the COA contains the results of all required analyses performed for the representative sample.

(b) The COA shall contain, at minimum:

1. The testing facility's name, premises address, and license number, processor's or manufacturer's name, premises address, and permit number;

2. Batch or lot number of the batch or process lot from which the sample was obtained. For products that are already packaged at the time of sampling, the labeled batch or lot number on the packaged hemp-derived cannabinoid products shall match the batch or lot number on the COA;

3. Sample identifying information, including matrix type and unique sample identifiers;

4. Sample history, including the date collected, the date received by the testing facility, and the date of all sample analyses and corresponding testing results;

5. The analytical methods, analytical instrumentation used, and corresponding LOD and limits of quantitation (LOQ);

6. An attestation from the testing facility supervisory or management employee that all LOQ samples required by this

administrative regulation were performed and met the acceptance criteria; and

7. Analytes detected during the analyses of the sample that are unknown, unidentified, or injurious to human health if consumed, if any.

(c) The testing facility shall report test results for each representative sample on the COA as an overall "pass" or "fail" for the entire batch:

1. When reporting qualitative results for each analyte, the testing facility shall indicate "pass" or "fail";

2. When reporting quantitative results for each analyte, the testing facility shall use the appropriate units of measurement as required in accordance with this administrative regulation;

3. When reporting results for each test method, the testing facility shall indicate "pass" or "fail";

4. When reporting results for any analytes that were detected below the analytical method LOQ, indicate "<LOQ", notwithstanding cannabinoid results;

5. When reporting results for any analytes that were not detected or detected below the LOD, indicate "ND"; and

6. Indicate "NT" for any test that the testing facility did not perform.

(d) The testing facility shall retain the reserve sample, consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept at minimum, for forty-five (45) business days after the analyses, after which time it may be destroyed and denatured to the point the material is rendered unrecognizable and unusable.

(e) The testing facility shall securely store the reserve sample in a manner that prohibits sample degradation, contamination, and tampering.

(f) The testing facility shall provide the reserve sample to the cabinet upon request.

(19)(a) In accordance with 2023 Ky. Acts ch. 78, a cannabinoid manufacturer or processor that ships adult-use products out of state for use or sale outside the Commonwealth of Kentucky:

1. Shall abide by the testing requirements of this administrative regulation if the receiving state does not have testing requirements; or

2. May defer to the receiving state's testing requirements if that state has equivalent testing requirements.

(b) Batch number of the batch from which the sample was obtained shall be on the COA for all products shipped out of state.

Section 4. Record Keeping. (1) A master formulation record shall be prepared and maintained for each unique hemp-derived cannabinoid product.

(2) The master formulation record shall include at least the following information:

(a) Name of the hemp-derived cannabinoid product;

(b) Ingredient identities and amounts;

(c) Specifications on the delivery device (if applicable);

(d) Complete instructions for preparing the hemp-derived cannabinoid product, including equipment, supplies, and description of the manufacturing steps;

(e) Process controls and procedures; and

(f) Any other information needed to describe the production and ensure its repeatability.

(3) A batch or process lot manufacturing record shall be created for each production batch of hemp-derived cannabinoid product.

(4) The batch manufacturing record shall include at the least the following information:

(a) Name of the hemp-derived cannabinoid product;

(b) Master formulation record reference for the hemp-derived cannabinoid product;

(c) Date and time of preparation of the hemp-derived cannabinoid product;

(d) Production batch number;

(e) Signature or initials of individuals involved in each manufacturing step;

(f) Name, vendor, or manufacturer, production batch number, and expiration date of each ingredient;

(g) Weight or measurement of each ingredient;

(h) Documentation of process controls:

(i) Any deviations from the master formulation record, and any problems or errors experienced during the manufacture, and corrective actions; and

(j) Total quantity of the hemp-derived cannabinoid product manufactured.

Section 5.[Section 3.] Product Packaging and Labeling. (1) Each hemp-derived cannabinoid product manufactured, marketed, sold, or distributed in the commonwealth shall be packaged and labeled in accordance with KRS 217.037, 2023 Ky. Acts ch. 78, and this administrative regulation.

(2) Each container of ingestible or cosmetic hemp-derived cannabinoid product shall:

(a) Have a tamper-evident seal; and

(b) Be in child-resistant packaging.

(3) Ingestible hemp-derived cannabinoid product packaging shall not include:

(a) Any cartoon images;

(b) Likeness to images, characters, or phrases that are popularly used to advertise to children;

(c) Likeness to or imitation of any commercially available candy, snack, baked good, or beverage packaging or labeling;

(d) The terms "candy" or "candies", or any variation in the spelling of these words; or

(e) The logo of the department or cabinet, or any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe the product has been endorsed, manufactured, or used by any state, county, or municipality or any agency thereof.

(4) The total amount of hemp-derived cannabinoid per serving and the total amount per container as reported by the testing facility:

(a) For hemp-derived cannabinoid infused edible products, potency shall be labeled as milligrams per serving for total tetrahydrocannabinol and total CBD, as applicable; and milligrams per package for total tetrahydrocannabinol and total CBD, as applicable;

(b) For hemp-derived cannabinoid concentrates total tetrahydrocannabinol and total CBD, as applicable shall be labeled in percentages; and

(c) The results of all other hemp-derived cannabinoids as a percentage, in either milligrams per gram (mg/g) if by weight, or milligrams per milliliter (mg/mL) if by volume, as applicable.

(5) The name of the hemp-derived cannabinoid product that includes a product modifier such as "Delta-8 THC product," or "CBD product" using the same or larger font than the product name.

(6) Adult-use hemp-derived cannabinoid ingestible products shall include the following warning label statements:

(a) "This product is intended for use by adults 21 years and older. Keep out of reach of children."

(b) "There may be health risks associated with the consumption of this product."

(c) "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or plan to become pregnant."

(d) "The intoxicating effects of this product may be delayed by two or more hours."

(e) "Do not drive a motor vehicle or operate machinery while using this product."

(f) "Use of this product may result in a positive drug screen".

Section 6. Retail Sale of Hemp-derived Cannabinoid Products.

(1) All hemp-derived cannabinoid products sold in a retail establishment shall:

(a) Be from an approved source;

(b) Be packaged and labeled in accordance with this administrative regulation; and

(c) Have a valid certificate of analysis available upon request.

(2) Retail establishments offering hemp-derived cannabinoid products shall register with the cabinet at <https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM> within ninety (90) days of the effective date of this emergency administrative regulation.

(3) Only cannabidiol products may be sold to persons under the

age of twenty-one (21).

(4) All adult-use hemp-derived cannabinoid products shall:

(a) Be secured in the retail setting to prevent theft or other access to persons under the age of twenty-one (21); and

(b) Not be sold, gifted, or otherwise transferred to any person under the age of twenty-one (21).

(5)(a) Any person who sells adult-use hemp-derived cannabinoid products at retail shall require proof of age of the buyer to verify the buyer is age twenty-one (21) years or older; and

(b) May deliver or ship adult-use hemp-derived cannabinoid products to consumers over twenty-one (21) years of age in packages clearly marked "Adult-use only, adult signature 21 years of age or over" required" and request adult-signature-only service from the carrier.

(6) The cabinet or its duly authorized agent shall inspect retail establishments for compliance with this administrative regulation.

(7) A retail establishment not in compliance with this administrative regulation shall be provided notice of the violation.

(8) All products not in compliance with this administrative regulation may be seized and destroyed by the cabinet or its duly authorized agent.

Section 7. Ingestible Hemp-derived Cannabinoid Products at Food Service Establishments.[Except as established in subsection (3) of this section, an ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:

(a) A statement of identity or common product name that shall be stated upon the principal display panel of the label;

(b) The net quantity of contents expressed in both standard English and metric units of measurement located in the lower thirty (30) percent of the principal display panel of the label parallel to the base of the container;

(c) The ingredients of the hemp-derived cannabinoid product, in descending order of predominance by weight;

(d) The name of the manufacturer or distributor;

(e) A statement that the hemp-derived cannabinoid product is within the federal legal limit of zero and three-tenths (0.3) percent delta-9 tetrahydrocannabinol;

(f) The total amount of cannabinoid per serving for ingestible products, or the total amount per container for cosmetic products;

(g) Suggested use instructions or directions, including serving sizes; and

(h) An expiration date, if any.

(3) An ingestible or cosmetic product that has a total area of twelve (12) square inches or less available to bear labeling shall be labeled in accordance with subsection (2) of this section, except the print may be smaller than six (6) point font but shall not measure less than 1/32 of an inch in height.

(4) Each container of ingestible or cosmetic hemp-derived cannabinoid product shall have a tamper-evident seal.

(5) Product packaging, labeling or advertising material for any hemp-derived cannabinoid product shall not bear any implicit or explicit health claims stating that the product can diagnose, treat, cure, or prevent any disease.

Section 4. Hemp-derived Ingestible Cannabinoid Products.]

(1) Only cannabidiol or CBD[hemp-derived cannabinoid] may be added to an ingestible product [during the manufacturing process or] prior to retail sale at a food service establishment.

(2) The hemp-derived cannabinoid shall be obtained from an approved source.

(3) The [food processor or] food service establishment shall obtain a valid certificate of analysis from the approved source and provide a copy upon inspection.

(4) [Food or ingestible product shall not contain a total delta-9 tetrahydrocannabinol concentration of more than zero and three-tenths (0.3) percent on a dry weight basis or contain tetrahydrocannabinol as the primary cannabinoid.

(5) A food service establishment offering cannabidiol or CBD[hemp-derived cannabinoid] products in a finished food product shall provide to consumers upon request:

(a) The common name of the product; and

(b) The manufacturer or distributor of the product;

(5) A food service establishment shall notify the cabinet within one (1) business day of becoming aware or within one (1) business day of when the food service establishment should have been aware of any adverse reactions to a hemp-derived cannabinoid product sold by the establishment[; and

(c) A statement that the hemp-derived cannabinoid product is within the federal legal limit of zero and three-tenths (0.3) percent delta-9 tetrahydrocannabinol].

Section 8. Inspection and Enforcement. (1) The cabinet or its duly authorized agent shall conduct an onsite inspection of all hemp-derived cannabinoid processing and manufacturing establishments, storage warehouses, distribution centers, and retail establishments.

(2) The location of the permitted or registered establishment, all general business records, including employee records, and vehicles utilized to transport products are subject to reasonable inspection.

(3) Permitted or registered establishments shall cooperate with the cabinet or its duly authorized agent during any inspections, complaint investigation, requests for information or data, in order to verify compliance with this administrative regulation.

(4) The permit holder shall take immediate steps to correct conditions that have caused an imminent health hazard.

(5)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or if product, product packaging, cosmetic, or cosmetic packaging has become contaminated because of an imminent health hazard.

(b) Notification to the cabinet shall be made by:

1. Email to food.safety@ky.gov; or

2. Phone to (502)564-7181.

(6) If the cabinet has evidence that a processing or manufacturing facility has failed to act to correct an imminent health hazard, the following enforcement provisions shall be initiated:

(a) Suspend the permit without an administrative hearing; or

(b) Suspend that portion of the processing or manufacturing operation affected by the imminent health hazard without an administrative hearing.

(7) If a permit suspension is due to an imminent health hazard, the permit holder may request an administrative hearing.

(8) A permit holder shall notify the cabinet within one (1) business day of becoming aware of any adverse reactions to a hemp-derived cannabinoid product sold or transferred by the permit holder.

(9) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(10) If a permit holder has failed to comply with the written notice within the timeframe granted, the cabinet shall issue a notice of intent to suspend the permit.

(11) The notice in subsection (10) of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period.

(12) Any person whose permit has been suspended may request a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(13) For a permitted facility that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 1, 2023

FILED WITH LRC: August 1, 2023 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall, if requested, be held on September 25, 2023, at 9 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 September 18, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed emergency 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 emergency administrative regulation until September 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed emergency 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 emergency 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: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the registration, processing, and manufacturing procedures to utilize hemp-derived cannabinoid products in foods and cosmetics, the labeling and packaging requirements for products containing hemp-derived cannabinoids, and methods for use of hemp-derived cannabinoids as an additive to food products.

(b) The necessity of this administrative regulation: Many hemp-derived cannabinoid products sold in Kentucky are currently unregulated. This emergency administrative regulation is necessary to ensure that all hemp-derived cannabinoid products produced and sold in the state are safe for human consumption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet or its duly authorized agents pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation ensures all hemp-derived cannabinoid products manufactured, processed, distributed, or sold are safe for human consumption, are labeled in a manner that allows the end user to understand the effects of the products, and prohibits the sale of products to a person under the age of twenty-one (21).

(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 emergency administrative regulation clearly defines hemp-derived cannabinoid products that are for adult-use only and separates these from nonintoxicating

hemp-derived cannabinoid products, adds requirements for processing facilities, revises the requirements for manufacturing facilities, adds product testing requirements to incorporate the federal Food and Drug Administration standards for product safety, adds the requirement for a retail store to register with the department, and adds enforcement actions should a processing or manufacturing facility violate the provisions of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this emergency administrative regulation is necessary because many hemp-derived cannabinoid products sold in Kentucky are currently unregulated by both the state and the federal Food and Drug Administration. Some products containing hemp-derived cannabinoids have concentrations that produce a psychoactive effect and are unsafe if consumed in large quantities. The labels of some products make it difficult to determine the amount of hemp-derived cannabinoid per serving, and other products are packaged to mimic candies or other items that may appeal to children and young adults. The amendment to this emergency administrative regulation is necessary to ensure that all hemp-derived cannabinoid products produced and sold in the state are safe for human consumption, are properly label, and are not targeted for sale to persons under the age of twenty-one (21).

(c) How the amendment conforms to the content of the authorizing statutes: House Bill 544 from the 2023 legislative session requires the cabinet to immediately begin the process of regulating delta-8 tetrahydrocannabinol and any other hemp-derived substances, revises the labeling and testing requirements for all hemp-derived cannabinoid products, and prohibits the possession of covered products by a person under the age of twenty-one (21). The bill contained an emergency clause.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this emergency administrative regulation will ensure products manufactured, processed, marketed, and sold in the commonwealth are safe for human consumption.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently forty-seven (47) manufacturers of cannabidiol (CBD) products registered with the department. Retail stores that sell CBD or other hemp-derived cannabinoid products, including those that contain delta-8, are not registered with the department at this time.

(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: Current manufacturers permitted by the department will need to ensure their products meet the manufacturing and testing requirements established by this emergency administrative regulation. Retail stores will need to register with the department, allow for inspection by the cabinet or its duly authorized agent, and ensure all products sold meet the requirements of this emergency 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 administrative regulation will not impact the cost of the currently registered processing and manufacturing facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Producers and manufacturers will be able to ensure the products offered are of the highest quality and do not unintentionally target the sale to persons under the age of twenty-one (21). Retail stores will be able to sell products that meet the highest manufacturing standards.

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

(a) Initially: The current budget for the food manufacturing permitting and inspection program is \$1,080,900. The increase in required permitting and inspection processes to implement this emergency administrative regulation will cost the department an additional \$500,800 in the first year.

(b) On a continuing basis: The department will continue to need an additional \$500,800, at a minimum, in subsequent years. An increase in permitted facilities will result in increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding to implement and enforce this emergency administrative regulation will be from a mix of fees paid to the department and state general fund dollars.

(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 emergency amendment to this administrative regulation does not increase the required fees and does not establish new fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The emergency administrative regulation does not establish any new fees and does not increase the existing fees. Currently manufacturers and processors pay the fee in accordance with 902 KAR 45:180.

(9) TIERING: Is tiering applied? Tiering is applied. Testing for solvents is only required if the products listed in this emergency administrative regulation are used in the manufacturing or processing 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 amendment to this emergency administrative regulation will impact the Food Safety Branch in the Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.125, 217.127, and 217.135.

(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? Current estimates indicate this emergency administrative regulation will generate between \$5,875 and \$47,000 in the first year. This figure was determined using the current fee structure in 902 KAR 45:180 multiplied by the number of currently permitted facilities. The minimum fee is \$125, and the maximum is \$1,000.

(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 emergency administrative regulation will generate between \$5,875 and \$47,000 in subsequent years. This figure is subject to change based on changes in the number of permitted facilities.

(c) How much will it cost to administer this program for the first year? Cost to the department to implement this emergency administrative regulation will be approximately \$500,800 in the first year. This figure was determined using the fiscal year 2020 salary and fringe rates for a minimum of four additional environmental health inspection program staff (\$125,200X4).

(d) How much will it cost to administer this program for subsequent years? Ongoing cost to the department to implement this emergency administrative regulation will be approximately \$500,800 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? The amendment

to this emergency administrative regulation will not generate cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The amendment to this emergency administrative regulation will not generate cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs to the regulated entities will be the required permitting fees (\$125 up to \$1,000), and any costs associated with the testing and labeling requirements.

(d) How much will it cost the regulated entities for subsequent years? The regulated entities will continue to pay the annual permit fee (\$125 up to \$1,000) and costs associated with the testing and labeling requirements in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This emergency administrative regulation could have a major economic impact to the Cabinet for Health and Family Services. It is estimated that an additional \$500,800 is needed to cover the costs for increased staff. While some of these costs will be offset by the required permitting fees, the total revenue received will not completely cover the anticipated costs.

STATEMENT OF EMERGENCY **908 KAR 2:300E**

This emergency administrative regulation is being promulgated to implement the requirements of KRS 230.826. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to immediately begin the process of regulating the administration of the Kentucky Problem Gambling Assistance account. This emergency administrative regulation establishes the process that eligible entities and programs must comply with to receive funds from the account and the process by which these funds may be granted. Additionally, this emergency regulation establishes standards that eligible entities must comply with regarding quality assurance measures that demonstrate the effectiveness of activities, programs, and services. This emergency administrative regulation will 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 Behavioral Health, Developmental and** **Intellectual Disabilities** **Division of Behavioral Health** **(New Emergency Administrative Regulation)**

908 KAR 2:300E. Kentucky problem gambling assistance account.

EFFECTIVE: July 31, 2023

RELATES TO: KRS 194A.005(1), (3), KRS Chapter 210, KRS 210.410(2), 211.185, 309.080(2), 309.130(2), 311.571, 311.840 to 311.862, 314.042, 319.050, 319.056, 319.064, 319C.010(6), 335.080, 335.100, 335.300, 335.500,

STATUTORY AUTHORITY: KRS 230.826

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.826

requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to establish criteria for the expenditure of funds from the Kentucky problem gambling assistance account to provide support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families experiencing difficulty as a result of problem gambling, or substance use disorder. These funds may also be used to promote public awareness and assistance of education and programs to reduce the consequences of problem gambling and pay for the costs and expenses associated with treatment of and recovery from problem gambling. This administrative regulation establishes the standards for the types of agencies, groups, organizations, and persons eligible to receive funding, types of eligible activities, required documentation, and the development of performance measures and evidence of successful expenditures of awarded funds. KRS 230.826 also requires the establishment of procedures for the submission, evaluation, and review of applications for funding; the awarding of funds; and the cabinet's monitoring of fund expenditures.

Section 1. Definitions.

(1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by KRS 335.300;

(i) A licensed professional clinical counselor as defined by KRS 335.500;

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4);

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Registered behavior technician under the supervision of a licensed behavior analyst.

(3) "Behavioral Health Services Organization" or "BHSO" means a program licensed in accordance with 902 KAR 20:430.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Client" means an individual described by KRS 210.410(2).

(6) "Community mental health center" or "CMHC" or "center" means a program established pursuant to KRS Chapter 210.

(7) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and

Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. Eligibility. (1) The following organizations and individuals are eligible to apply for funding, to the extent funds are available, from the Kentucky problem gambling assistance account:

- (a) A CMHC licensed in accordance with 902 KAR 20:091;
- (b) A BHSO licensed in accordance with 902 KAR 20:430;
- (c) A Behavioral health professional;
- (d) A health department established pursuant to KRS 211.185; or
- (e) A federally designated 501(c)3 organization.

(2) Applications for funding must be for at least one (1) of the following activities:

- (a) Providing support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families who experience difficulty as a result of substance use disorder, or problem or compulsive gambling;
- (b) Promoting public awareness of, and providing education about, problem gambling;
- (c) Establishing and funding programs to certify problem gambling counselors; or
- (d) Promoting public awareness of assistance programs for those experiencing consequences of problem gambling.

Section 3. Application for Funding. Entities that meet the eligibility requirements established in Section 2(1) of this administrative regulation shall submit a "Kentucky Gambling Assistance Application" with the required supporting documentation to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account:

- (1) In writing to 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or
- (2) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 4. Monitoring. Recipients of funds from the Kentucky problem gambling assistance account shall:

- (1) Establish and conduct evaluation measures that assess the efficacy of services provided;
- (2) Collect and report the following data:
 - (a) The number of individuals served;
 - (b) Types of services provided to individuals served; and
 - (c) Detailed costs for the number of individuals served and the services provided during the reporting period.
- (3) Submit quarterly reports meeting the requirements established in this section of the administrative regulation:
 - (a) To the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account, 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or
 - (b) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 5. Treatment Professional Certification. (1) Qualified behavioral health providers seeking certification from a cabinet-approved, nationally or internationally recognized certifying organization shall:

- (a) Have at a minimum a bachelor's degree or equivalent in a behavioral health field;
- (b) Have current Kentucky licensure in substance use disorder counseling, or mental health counseling or equivalent work experience;
- (c) Complete fifteen (15) hours of training on problematic and disordered gaming prevention, assessment, and co-occurring issues for individuals and families by an approved trainer;
- (d) Complete fifty (50) direct contact hours addressing the issues, prevention and early intervention, co-occurring and when to refer for individuals and families with a gaming disorder;
- (e) Complete a minimum of four (4) consultation hours with an approved consultant from the certifying organizations board;
- (f) Complete all application materials, ethical statement, and directory authorization forms required by the certifying organization;
- (g) Pass any examination required by the cabinet-approved certifying organization; and

(h) Pay fees associated for the completion of certification to the certifying organization.

(2) To the extent funds are available, individuals may apply for reimbursement for any fees paid after successful completion of certification from a cabinet-approved certifying organization by submitting an application to the department for reimbursement.

Section 6. Department Responsibilities. The department shall publish on the department Web site:

- (1) Certified treatment providers for individuals experiencing the consequences of problem gambling; and
- (2) Problem gambling treatment and recovery services and resources.

Section 7. Incorporation by Reference. (1) "Kentucky Gambling Assistance Application", 07/23, 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 departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

KATHERINE R. MARKS, Ph. D., Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 31, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 25, 2023 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 September 18, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 September 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: Rachael Ratliff and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 230.285 establishing the standards and requirements for the administration of the Kentucky problem gambling assistance fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS. 230.826 by establishing

the standards and requirements for the administration of the Kentucky problem gambling assistance 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: 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: According to the Kentucky Council on Problem Gambling, over 100,000 Kentucky adults exhibit problem gambling traits, and more than 45,000 Kentucky adults struggle with addiction to gambling. Currently, there are seven practicing mental health professionals certified to treat gambling disorder 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 regulated entities will need to meet the criteria established in the statute and submit the required application and supporting documentation for an opportunity to receive funding.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with the application for funding opportunities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will experience certification and an increased opportunity for funding for programming designed to address and treat behaviors associated with problem gambling.

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

(a) Initially: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(b) On a continuing basis: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented with funds from the Kentucky problem gambling assistance account and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation may result in an increased need for funding dependent upon the request from the impacted entities. This impact is unknown at this time.

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

(9) TIERING: Is tiering applied? Tiering is not applied 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 Cabinet for Health and Family Services, Department for Behavioral Health,

Developmental and Intellectual Disabilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2023 Ky. Acts ch.147, sec. 2.

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

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

(c) How much will it cost to administer this program for the first year? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(d) How much will it cost to administer this program for subsequent years? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation should not cost regulated entities in the first year for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation should not cost regulated entities in subsequent years for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

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 should not have a major economic impact.

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.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency As Amended at IJC on Education, August 1, 2023)

16 KAR 2:240E. Interim certificate.

EFFECTIVE: August 1, 2023

Prior Version –

New Emergency Administrative Regulation: [50 Ky.R. 302](#)

RELATES TO: KRS 161.020

STATUTORY AUTHORITY: HB 319 RS 2023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020(1) requires educators to hold a certificate of legal qualifications for the position, issued by the Education Professional Standards Board (EPSB). Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

Section 1. Interim Certificate. (1) A candidate shall be eligible for issuance of the one-year interim certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) A bachelor's degree or higher as evidenced by an official transcript from a nationally or regionally accredited institution of higher education; **and**

(b) Confirmation from an employer of a minimum of four (4) years of work experience in the area in which certification is being sought; **and**

~~(c) An offer of employment in a Kentucky school district in the area in which certification is being sought.~~

(2) An applicant for certification in the area of career and technical education may substitute an additional four (4) years of work experience in the area in which certification is being sought to meet the requirements of subsection (1)(a) of this section.

(3) Work experience shall be considered in the area of certification if it includes the content taught by the certificate.

(4) The interim certificate shall be issued for the certification area that aligns with the applicant's work experience and job offer.

(5) The interim certificate 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.

(6) An interim certificate shall not be valid after June 30, 2026.

Section 2. Renewal of the Interim Certificate. (1) A candidate shall be eligible for renewal of the one-year interim certificate upon application to the EPSB **and** compliance with 16 KAR 2:010, Section 3(1) **and evidence of employment in a Kentucky school district in the content area or areas indicated on the initial certificate**.

(2) The interim certificate may be renewed a maximum of two (2) times.

(3) The interim certificate shall not be renewed after June 30, 2026.

JUSTIN MITCHELL, Board Chair

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 23, 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 August 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 requirements for issuance of the interim certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for issuance and renewal of the interim certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 8 of HB 319 RS 2023 creates an interim certificate and authorizes the EPSB to promulgate administrative regulations to issue the interim certificate.

(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 issuance and renewal of the interim certificate.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, and individuals pursuing the interim certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the interim certificate will have to submit the application and documentation required in 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 fee established by the Education Professional Standards Board in this regulation and there is no fee for the issuance of a one-year certificate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of the interim certificate for interested applicants. Districts will be able to hire holders of the interim certificate as a teacher of record.

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

(a) Initially: There will be cost associated with the review and processing of applications for the interim certificate. At this time, it is unknown how many will pursue the certificate, so the cost is unknown.

(b) On a continuing basis: There will be continuing costs with the review and processing of the applications for the interim certificate, but it is unknown how many will pursue this certificate.

(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 as all applicants are required to meet the requirements of the certificate sought.

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 and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 319 RS 2023.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

(d) How much will it cost to administer this program for subsequent years? There will be costs associated with the review and processing of applications, but it is unknown how many will pursue this certificate.

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 interim certificate. It is anticipated that the current staff will be able to review and process the additional applications.

(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: As this is a new certificate it is unknown how many applicants will pursue the interim certificate.

(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 regulated entities and the cost to the Education Professional Standards Board are expected to be minimal.

EDUCATION AND LABOR CABINET Education Professional Standards Board (Emergency As Amended at ARRS, August 8, 2023)

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

EFFECTIVE: August 8, 2023

Prior version - 49 Ky.R. 2200

RELATES TO: KRS 156.111, 160.345(2)(h), ~~[160.380(5)(c), 161.027, 161.028(1)(k), (s), (t), 161.030(11)(10)]~~, 161.048, 161.1211, 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 employed in a public school, 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 7:010, 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, the candidate[they] shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

(3) A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school 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, ~~the candidate~~they shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional ~~certificate~~ 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.]~~

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.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency As Amended at ARRS, August 8, 2023)**

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

EFFECTIVE: August 8, 2023

Prior version - 49 Ky.R. 2205

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

(6) A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school 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. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

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.

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health, Life and Managed Care

(Emergency As Amended at ARRS, August 8, 2023)

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

EFFECTIVE: August 8, 2023

Prior Version - Emergency Amendment: [49 Ky.R. 2215](#)

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. 114-10, 108-173, 116-127, 117-328

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(12)(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 **subparagraph 4. of this 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, reinstitution 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 subsection[section];

2. The benefit described in paragraph (a)4, 5, 6, 7, and 8 of this subsection[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 an 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 **subsection 5(c) of this section**~~[Section 10(5)(c) of this administrative regulation]~~, or standardized benefit Plan F, as described **subsection 5(e) of this section**~~[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 **subsection (6) of this section**~~[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**~~[an]~~ 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) [(10)(5)(e)]~~ 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) [(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) **of this section** 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(b)(3)[6008] of the Families First Coronavirus Response Act, Pub. L. 116-127, subsequently amended in Section 5131(a) of the Consolidated Appropriations Act, 2023, Pub. L. 117-328[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(b)(3)[6008] of the Families First Coronavirus Response Act, Pub. L. 116-127, subsequently amended in Section 5131(a) of the Consolidated Appropriations Act, 2023, Pub. L. 117-328[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), [or (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~~**[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[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.

(3) This material may also be obtained at the department's Web site at insurance.ky.gov/ppc/new_laws.aspx.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 8, 2023)

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 ~~(11)(40)~~, 161.048, **161.1211**, 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 employed in a public school, 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 7:010, 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, ~~the candidate[they]~~ shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional **certificate** and shall complete the internship during the final temporary provisional certificate.

(3) A candidate for exceptional children or interdisciplinary early childhood certification **employed in a public school** 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, ~~the candidate~~they shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional ~~certificate~~ 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.]~~

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.

**EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, August 8, 2023)**

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:

(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, the candidate[they] shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

(6) A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school 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 a 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. **This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.**

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.

PERSONNEL CABINET

(As Amended at ARRS, August 8, 2023)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165, **29 U.S.C. sec. 201, et seq.**

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes

requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments.

(1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is not on initial or promotional probation and is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

- (a) Is in the same job classification;
- (b) Is in the same department or office;
- (c) Is in the same work county; and
- (d) Has a similar combination of education and experience relating to the relevant job class specification.

(3) If sufficient funds are available, the appointing authority may identify each incumbent employee affected by subsection (2) of this section whose salary is less than five (5) percent above the appointment salary assigned to the new employee. The appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary.

Section 2. Reentrance to Classified Service.

(1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated after a break in continuous employment in the classified service, or probationarily appointed in one (1) of the following ways:

1. a. In accordance with the standards used for making new appointments in this administrative regulation;

b.[2.] Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or

c.[3.] The same salary as that paid at the time of separation from the classified service if provided the employee is returning to the same pay grade or same job classification held at the time of separation from the classified service.

2.[4.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed, or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. a. In accordance with the standards for making new appointments;

b.[2.] Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary;

c.[3.] At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed

the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary; or
d.[4.] At a salary up to five (5) percent above the pay grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

2.[5.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one (1) of the following ways:

1. a. In accordance with the standards for making new appointments; or

b.[2.] At a salary up to five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.

2.[3.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary the employee was receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service. A former employee who is probationarily appointed at a salary at or below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

Section 3. Salary Adjustments.

(1) Promotion.

(a) An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsections[subsection] (2)(b), (3)(b), and (4)(b) of this section; or

(b) If sufficient funds are available ~~and except as provided under subsection (2)(b) of this Section~~, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade if as long as the increase is greater than the increase specified in paragraph [subsection (1)](a) of this subsection[section].

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place

the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until the employee is moved to a job classification with a higher pay grade than that from which he or she was demoted. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(c) Upon the event of a salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section, and paragraph (b) of this subsection; or

2. If sufficient funds are available and except as provided under subsection (2)(b) of this Section, up to the midpoint of the pay grade if as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until the employee is moved to a job classification with a higher pay grade than that from which he or she was reclassified. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b) and (3)(b) and (4)(b) of this section, and paragraph (b) of this subsection.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until he or she is moved to a job classification with a higher pay grade than that from which he or she was reallocated. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the midpoint of the pay grade, if as long as the increase is greater than

the increase specified in paragraph (a) of this subsection.

(c) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail except as provided under paragraph (b) of this subsection.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and

2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(c) The increment date of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be restored to the increment date set prior to leaving the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade; or

2. The greater of the new grade minimum or ten (10) percent per pay grade; or

3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his or her current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the entrance of the pay grade and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent per pay grade increase or ten (10) percent per pay grade increase [salary adjustment] as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase to [of] the employee's salary immediately prior to the grade change. The [Such] adjustment shall not be retroactive.

(b) If sufficient funds are available, an appointing authority may adjust the salary of one (1) or more employees with status in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2.

a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and ~~one-half~~~~[five-tenths]~~ (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements.

(1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) An employee who separates prior to the first of the month following completion of a probationary period shall forfeit the five (5) percent salary advancement.

(4) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has received compensation in any twelve (12) months without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection ~~(6)~~~~(5)~~ of this section.

~~(5)~~~~(4)~~ Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified;

(j) Receives a promotional increase after completion of a promotional probationary period; or

(k) Is reemployed after layoff.

~~(6)~~~~(5)~~ Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

~~(7)~~~~(6)~~ Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

~~(8)~~~~(7)~~ Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award.

(1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency

certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment.

(1) If the secretary authorizes an adjustment of ~~a~~~~the~~ salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level wage of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Paid Overtime.

(1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums.

(1) Locality premium.

(a) 1. Upon request by an appointing authority, the secretary may authorize and establish the amount of the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit *if[where]* the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; or[.]

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit *if[where]* there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class

specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least one (1) full-time filled position in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time classified positions if:

1. The positions are in the same job classification, work county, and department or office *if[where]* the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a probationarily

appointed, rehired, or reinstated employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment, rehire, or reinstatement;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment, rehire, or reinstatement;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed, rehired, or reinstated; and

3. Fifty (50) percent of the total sign-on bonus on the first day of the month after completion of twelve (12) months of active service in the position into which the employee was appointed, rehired, or reinstated.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed, rehired, or reinstated.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment, rehire, or reinstatement.

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 10. Employee Recognition Award (ERA).

(1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the grade midpoint under the following conditions:

~~(a) [The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;]~~

~~[(b)]~~ The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

~~(b) [(c)]~~

1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

~~(5) [An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.]~~

~~[(6)]~~ An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award;

and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office;

and

2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the grade midpoint of the position in which the employee holds status to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d) 1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if:

(a) An educational achievement award has been granted for the same training; or

(b) The employee received either of the two (2) lowest possible evaluation ratings on the most recent performance evaluation.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

~~(4) [An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.]~~

~~[(5)]~~ An appointing authority shall submit a written justification to the Personnel Cabinet to grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 12. Voluntary Actions. An employee request for transfer, demotion, or promotion shall be documented on the Voluntary Transfer/Demotion/Promotion Employee Agreement Form in Accordance with 101 KAR 1:335 and 101 KAR 1:400.

Section 13. Incorporation by Reference.

(1) "Voluntary Transfer/Demotion/Promotion Employee Agreement Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site at: <https://personnel.ky.gov/Pages/mir.aspx> [<https://extranet.personnel.ky.gov/Pages/Documentsindemand.aspx>].

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

PERSONNEL CABINET
(As Amended at ARRS, August 8, 2023)

101 KAR 2:095. Classified service general requirements.

RELATES TO: KRS 18A.020, 18A.030(2), 18A.095, 18A.110, 18A.190

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Attendance; Hours of Work.

(1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half ~~(37.5)~~~~(37-1/2)~~ hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half ~~(37.5)~~~~(37-1/2)~~ hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official work station or alternate work station.

Section 2. Official Work Station, Alternate Work Station, and Temporary Assignment.

(1) Each employee shall be assigned an official work station and may be assigned one (1) or more additional alternate work stations by the appointing authority.

(2) An official work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 3. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 4. Notice of Resignation and Retirement.

(1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A

copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 5. Records and Reports.

(1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 6. Telecommuting.

(1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 7. Workplace Violence Policy.

(1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 8. Issuance of Pay to State Employees.

(1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday, as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 9. Correction of Errors. With the appointing authority's concurrence, the secretary may correct ~~an executive branch agency's~~ pay or leave errors caused by an executive branch agency if error when in the best interest of the Commonwealth such as correction of any errors found to be out of statutory or regulatory compliance~~[service]~~.

Section 10. Incorporation by Reference.

(1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <https://personnel.ky.gov/Pages/mir.aspx>.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

PERSONNEL CABINET (As Amended at ARRS, August 8, 2023)

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(2), 18A.155(1)(b), (e), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other

than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service~~, if that salary is within the current pay grade~~.

Section 3. Salary Adjustments. (1) Promotion.

(a)1. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater; or

2. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(b) If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of subsection (1)(a) of this section.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made;

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(c) In the event of a salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent or the new grade minimum;

2. The greater of five (5) percent for each grade or the new grade minimum; or

3. If sufficient funds are available, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the

midpoint of the pay grade, as long as the increase is greater than the increase specified in paragraph (a) of this subsection.

(c) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary except as provided under paragraph (b) of this subsection.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall

raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade; ~~or~~

2. The greater of the new grade minimum or ten (10) percent per pay grade; ~~or~~ or

3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may also grant a salary adjustment equal to the difference between the entrance of the pay grade and the new special entrance rate to other employees in that job classification, except those employees who are on initial probation.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for, but did not receive, an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive, at least a five (5) percent per pay grade increase or ten (10) percent per pay grade increase ~~to~~ as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase to ~~of~~ the employee's salary immediately prior to the grade change. The ~~Such~~ adjustment shall not be retroactive.

(c) If sufficient funds are available, an appointing authority may adjust the salary of one (1) or more unclassified employees in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2. a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and one-half ~~five-tenths~~ (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base

pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority may grant a five (5) percent increase to an employee, except an interim employee, on the first day of the month following completion of the greater of six (6) months of service or the months of service required by 101 KAR 1:325 Section 1(2).

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of the greater of six (6) months service after promotion or the months of service required by 101 KAR 1:325 Section 1(2).

(3) Annual increment dates shall be established as follows:

(a) On the first day of the month following completion of the initial probation period; or

(b) On the first day of the month following completion of twelve (12) months service since receiving the last annual increment for an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee, other than an interim employee, returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established in subsection (5) of this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
 - b. While in state service; and
 - c. After establishing an increment date.
2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and
3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.
- (b) For postsecondary education or training, the qualifying conditions shall be met if:
- 1. The employee has completed 260 hours of job-related instruction, or the equivalent;
 - 2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;
 - 3. The employee has completed the course work within five (5) years of the date on which it was begun;
 - 4. The course work has not previously been applied toward an educational achievement award;
 - 5. The agency has not paid for the course work or costs associated with it, in whole or in part; and
 - 6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment. (1) If the secretary authorizes an adjustment of ~~the~~ salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Locality premium.

(a) 1. Upon request by an appointing authority, the secretary may authorize ~~and establish the amount of~~ the payment of a locality premium for an employee who is regularly, ~~or~~ temporarily, ~~or~~ intermittently assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; ~~or~~

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work

county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion, or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual

premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least one (1) full-time filled position in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time unclassified positions if:

1. The positions are in the same job classification, work county, and department or office where the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a newly appointed or rehired employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment or rehire;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment or rehire;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed or rehired; and

3. Fifty (50) percent of the total sign-on bonus on the first day of

the month after completion of twelve (12) months of active service in the position into which the employee was appointed or rehired.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed or rehired.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment or rehire.

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 9. Employee Recognition Award (ERA). (1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary[grade midpoint] under the following conditions:

(a) [The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which is in the department or office granting the award;

(b)] The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

(b)](e)]1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) [An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.

(6)] An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary[grade midpoint] to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the

preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) [An appointing authority shall not grant an ACE award to more than twenty-five (25) percent of the total number of full-time employees in a department or office in a calendar year.

(5) An appointing authority shall submit a written justification to the Personnel Cabinet to

grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. The provisions of the Adoption Benefit Program established in 101 KAR 2:120 shall apply to an employee in the unclassified service.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, August 8, 2023)**

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) and (3)(d)[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 not 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 shall[will] not affect the recipient's disability retirement.

Section 2. Use of Third-party Vendors.

(1) KRS 61.505(3)(d) authorizes the agency to contract with third-party vendors to act on its behalf throughout the disability retirement application and review process, and throughout the periodic review, reinstatement review, and employment review process.[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, a recipient[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.

[(1) 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. A recipient[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 ~~shall~~**[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. ~~A request for~~ 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 (1) of the options detailed in subparagraph ~~1.[(a)], 2.[(b)], or 3.[(c)]~~ of ~~this~~ **[paragraph (a) of this subsection]**, 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 **regulation**.

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 ~~fails to cancel~~~~[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) ~~A recipient[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), ~~a recipient[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, ~~a recipient[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 ~~shall[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 ~~shall[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 person who filed the appeal/appealer 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, a recipient/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 shall/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.

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.

BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, August 8, 2023)

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) ~~and~~ (2) ~~require~~**[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 ~~establishes~~**[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 **general examination content and policies** 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 **compliance with KRS 323.050(2) and** 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 **and if available, shall****[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~~**[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.

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.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, August 8, 2023)

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.[(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.[(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.[(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:

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- (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 precursory 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; ~~[-or]~~ **or**
 - (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.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email Jeffrey.Prather@ky.gov; or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

BOARDS AND COMMISSIONS

Board of Chiropractic Examiners

(As Amended at ARRS, August 8, 2023)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

- (1) (a) A completed, **notarized** [New Licensee] Application **for Licensure with a two (2) inch by two (2) inch passport photo taken within the past six (6) months of application**; and

(b) [(2)] A nonrefundable application fee of \$350.

(2) [(3)] If the initial applicant graduated from chiropractic school more than four (4) years ago, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the initial applicant submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:

(a) The number, or approximate number, of patients treated per week;

(b) The practice **location or locations**, [location(s)] and

address or addresses[address(es)] at which the licensee has practiced, and the month and years of practice at each respective location; and

(c) Any relevant information the licensee may submit to show active practice.

Section 2. Licenses. Each license by the board shall:

(1) Set forth the:

(a) Name of the issuing board;

(b) Name of the licensee;

(c) Number of license; and

(d) Date of the license issuance;

(2) Be signed by a minimum of three (3) members of the board;

and

(3) Have the seal of the board affixed.

Section 3. License Renewal.

(1)

(a) Each licensee of the board shall annually renew the license on or before the first day of March.

(b)

1. A licensee seeking active status shall:

a. Submit a completed Application for Annual License Renewal that includes the notarized affidavit, if applicable; and

b. Pay a renewal fee of \$250.

2. A licensee seeking inactive status shall:

a. Submit a completed Application for Annual [Inactive] License Renewal that includes the notarized affidavit, if applicable[Application]; and

b. Pay a renewal fee of seventy-five (75) dollars.

(2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.

(3) Continuing education requirements.

(a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with:

[1.] ~~[A minimum of six (6) hours of the required twelve (12) hours obtained at a live event, which is an event at which both the licensee and presenter are present in-person;]~~

1.~~[2.]~~ No more than eight (8) hours completed in a day; and

2.~~[3.]~~ Proof of completion submitted with the Application for Annual License Renewal upon request by the Board.

(b) ~~1.~~ A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, by the licensee's first renewal.

2. A new licensee ~~within one (1) year of the date of the licensee's initial license approval; [; but] shall not [otherwise] be required to complete the continuing education requirements set out in paragraph [(3)](a) of this subsection[above] until after the licensee's first renewal and before the licensee's [licensees'] second renewal.~~ The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.

~~[(e)] [A new licensee shall complete the licensee's required twelve (12) hours of continuing education by the first relicensing period following the completion of his or her first calendar year in practice.]~~

~~[(c)][(d)] An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.~~

(d) A[No] continuing education course shall not[may] be repeated for credit within the same renewal period.

Section 4. Activation of an Inactive License.

(1) To activate an inactive license, a licensee shall submit:

(a) A completed Application for Activation or Reinstatement of Kentucky License;

(b) The renewal fee required by Section 3(1)(b) of this administrative regulation;

(c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and

(d) License verification from each state or jurisdiction from which the licensee has held a license.

(2) If the licensee was inactive for more than four (4) years, proof

of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the licensee submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:[-]

(a) The number, or approximate number, of patients treated per week;

(b) The practice location or locations,[location(s)] and address or addresses[address(es)] at which the licensee has practiced, and the month and years of practice at each respective location; and

(c) Any relevant information the licensee may submit to show active practice.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

(1) Has a conviction for a felony or violation of any law involving moral turpitude; or

(2) Violates any of the provisions of KRS Chapter 312 or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensure", DPL-KBCE-01, June[March] 2023;["New Licensee Application", 2016;]

(b) "Application for Annual License Renewal", DPL-KBCE-03, June[March] 2023; and[September 2020;]

[(c)] ["Annual Inactive License Renewal Application", 2013; and]

[(c)][(d)] "Application for Activation or Reinstatement of Kentucky License", DPL-KBCE-04, June[March] 2023[2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00[4:30] p.m. This material is also available on the board's Web site at www.kbce.ky.gov.

CONTACT PERSON: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (As Amended at ARRS, August 8, 2023)

201 KAR 21:042. Standards, applications[application] and approval of continuing education.

RELATES TO: KRS 312.017, 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes standards for continuing education and the procedures relating to the application and approval of continuing education.

Section 1. Standards for Continuing Education.

(1) Continuing education shall be ~~[either:]~~

~~[(a)] [A post-graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or]~~

~~[(b)] [A continuing education program] approved by the board,~~

or by a committee designated by the board to act between sessions of the board.

(2) The continuing education program shall be:

(a) 1. A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or

2. (b)(a) Sponsored by a national or state chartered organization of chiropractors, or a chiropractic college; and

(b)(c)(b) Open to all doctors of chiropractic in Kentucky who desire to attend.

(3) The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences.

(4) The programs to be presented shall contain subjects of clinical benefit to licensees and on a postgraduate level of education.

(5) The programs shall comply with the Kentucky chiropractic scope of practice as defined by KRS 312.017. f; and

(6) The board or its designated committee shall determine if: whether-

(a) Online versus live education is appropriate for the subject matter being offered; and in its determination whether-

(b) To approve programs as proposed.

Section 2. Requirements for Online Continuing Education.

(1) Any entity submitting an online course for approval shall:

(a) Be Pre-Approved Continuing Education (PACE) Commission certified; and

(b) Submit the program through the PACE pre-check program using the Kentucky Board of Chiropractic Examiners Continuing Education Application form. [PACE Pre-Check Expedited Course Submission for Kentucky form. Any entity not certified through PACE shall submit an application for approval for a program directly to the board through December 31, 2020 by completing the Kentucky Board of Chiropractic Examiners Continuing Education Application.]

(2) The program shall:

(a) Have a mechanism to ensure that users view each page of the program:

(b) Ensure the user has earned all of the time required for the program;

(c) Have a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education programs;

(d) Include a mechanism to evaluate the user's knowledge of the subject matter contained in the program;

(e) Provide a printed verification or allow the user to print verification only upon completion of the program; and

(f) Ensure that the course time cannot be earned away from the program and that automatic lock out occurs if the keyboard becomes unattended; and

(g) Have an original recording date within five (5) years from the time the course is approved for credit by the board.

(3) Programs shall be completed and earned one (1) at a time. The user of a program shall not earn credit for multiple windows or programs completed simultaneously.

Section 3. Application for Approval.

(1) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by submitting [either the PACE Pre-Check Expedited Course Submission for Kentucky form if PACE certified, or if not certified through PACE by submitting] the Kentucky Board of Chiropractic Examiners Continuing Education Application, and by providing to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of classroom hours over which the educational program will be presented, and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications;

(g) The name and address of the person authorized to certify

attendance; and

(h) An educational program review fee as established in subparagraph 1. through 3. of this paragraph.

1. Live Events Only - A live event is an event at which both the presenter and attendee are present in person. A minimum fee of twenty-five (25) dollars for a live one-time event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. For events with multiple dates and locations there will be an additional twenty-five (25) dollar fee.

2. Online Events Only - A minimum fee of twenty-five (25) dollars for a live one-time event or recorded event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

3. Live Event That Will Also Be Recorded To Be Used As Online CE - A minimum fee of fifty (50) dollars for an event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

(2) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board.

(3)

(a) A proposed program shall be received by the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more than thirty (30) days after receiving the proposed educational program.

(c) An online course shall remain approved for one (1) calendar year from a date of the event provider's choosing if that date is no earlier than sixty (60) days from the date the board received the submission for approval.

Section 4. Incorporation by Reference.

(1) [The following material is incorporated by reference:]

[(a)] "PACE Pre-Check Expedited Course Submission for Kentucky form", (2020); and

[(b)] "Kentucky Board of Chiropractic Examiners Continuing Education Application", DPL-KBCE-05, June [March] 2023, is incorporated by reference [September 2020].

(2) This material [These materials] may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, [from] 8:00 a.m. to 4:00 p.m. This material is also available on the board's Web site at www.kbce.ky.gov.

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BOARDS AND COMMISSIONS Board of Chiropractic Examiners (As Amended at ARRS, August 8, 2023)

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

RELATES TO: KRS 312.175, 312.200(3)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312 governing the practice of chiropractic. KRS 312.200(3) requires that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, and annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the

licensure, review course, registration, and registration fee for persons to perform peer review services.

Section 1. Requirements for Licensure and Registration. A person performing chiropractic peer review shall:

(1) Hold a current active license to practice chiropractic within the Commonwealth of Kentucky;

(2)

(a) For the first year that a person seeks to register to perform peer review, have previously successfully completed a course consisting of a minimum of 100 hours of utilization review and independent medical examination from a chiropractic college or university accredited by the Council on Chiropractic Education; and

(b) For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of continuing education in topics specifically related to utilization review and approved by the board to meet this requirement; ~~and which shall be obtained at a live, in-person event within the Commonwealth of Kentucky; and~~

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements established in this section and of having met the education requirements of KRS 312.175;

(b) Completing the Application for Chiropractic Peer Reviewer ~~Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims~~; and

(c) Paying a registration fee of fifty (50) dollars.

Section 2. In performing peer review activities, a licensee shall:

(1) Render the actual review service and documented report;

(2) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years;

(3) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct established in 201 KAR 21:015;

(4) Provide a report that includes the rationale for the determination in order that the licensee provider is given adequate information to appeal;

(5) Sign all reports, unless the review is performed under the Kentucky Chiropractic Board of Examiners Peer Review Committee, in which case, the board's administrator or designee shall sign the determination;

(6) Review in accordance with accepted standards as defined in 201 KAR 21:001;

(7) Review thoroughly and rely on all documents provided to the reviewer;

(8) List in the resulting report all documents provided to the reviewer and list all documents reviewed; and

(9) Personally conduct the review and prepare the report.

Section 3. Complaint Procedure Related to Peer Reviewers. A complaint against a peer reviewer alleging a violation of this administrative regulation or any other provision of KRS Chapter 312 or 201 KAR Chapter 21 shall be filed and processed according to the procedure established in 201 KAR 21:051.

Section 4. Incorporation by Reference.

(1) "Application for Chiropractic Peer Reviewer". DPL-KBCE-02, March 2023, ["Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims" 2013.] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, **Monday through Friday, from 8:00 a.m. to 4:00 p.m. This material is also available on the board's Web site at www.kbce.ky.gov.**

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BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(As Amended at ARRS, August 8, 2023)

201 KAR 21:105. Telehealth chiropractic services.

RELATES TO: KRS 211.332, 211.334, 211.335, 211.336, 312.019, 312.220, 29 U.S.C. 794(d); ~~211.332, 211.334, 211.335, 211.336]~~

STATUTORY AUTHORITY: KRS 211.332, 211.336, 312.220; ~~211.332, 211.336.]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.220(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement ~~[this section]~~ and as necessary to: (a) Prevent abuse and fraud through the use of telehealth services; (b) Prevent fee-splitting through the use of telehealth services; and (c) Utilize telehealth in the provision of chiropractic services and in the provision of continuing education. ~~[Additionally,]~~ KRS 312.220(1) requires that a treating chiropractor utilizing telehealth ensures the patient's informed consent and maintains confidentiality. KRS 211.336 establishes requirements for ~~a state agency~~ agencies that ~~promulgates~~ promulgate administrative regulations relating to telehealth. This administrative regulation establishes the requirements for telehealth for chiropractic services.

Section 1. Definitions.

(1) "Client" means the person receiving the services of the chiropractor.

(2) "Telehealth" is defined by KRS 211.332(5) and 312.220(3) ~~and KRS 211.332(5)]~~.

(3) "Telehealth chiropractic services" means the practice of chiropractic as defined by KRS 312.220(3), between the chiropractor and the patient that is provided, using:

(a) Interactive audio, video, or other electronic media; or

(b) Electronic media for diagnosis, consultation, treatment, and transfer of health or medical data.

Section 2. Client Requirements. A practitioner-patient relationship may commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a). A licensed health care practitioner may represent the client at the initial meeting. A credential holder using telehealth to deliver chiropractic services shall, upon initial contact with the client:

(1) Make ~~[reasonable]~~ attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically such as by the use of a telephone number or mailing address;

(3) Provide to the client alternative means of contacting the credential holder other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the credential holder shall use for emergency purposes such as an emergency on call telephone number;

(5) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;

(6) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;

(7) In accordance with KRS 312.220(1)(a) and 900 KAR 12:005, Section 2(3), obtain the informed consent of the client; and

(8) Inform the client in writing about:

(a) The limitations of using technology in the provision of telehealth chiropractic services;

(b) Potential risks to confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telehealth chiropractic services;

(c) Potential risks of disruption in the use of telehealth chiropractic services;

- (d) When and how the credential holder will respond to routine electronic messages;
- (e) In what circumstances the credential holder will use alternative communications for emergency purposes;
- (f) Who else may have access to client communications with the credential holder;
- (g) How communications may[can] be directed to a specific credential holder;
- (h) How the credential holder stores electronic communications from the client; and
- (i) How the credential holder may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver telehealth chiropractic services shall:

- (1) Limit the practice of telehealth chiropractic services to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telehealth chiropractic through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
- (3) Document the client's presenting problem, purpose, or diagnosis;
- (4) Follow the record-keeping requirements of 201 KAR 21:100;
- (5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 211.332(5)(c) and 312.220(1)(b)[and 211.332(5)(c)]; and
- (6) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver telehealth chiropractic services shall:

- (1) Maintain patient privacy and security in accordance with 900 KAR 12:005, Section 2(2);
- (2) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;
- (3) Be licensed or otherwise authorized by law to practice chiropractic where the client is physically present; and
- (4) Comply with applicable state laws and administrative regulations if[in the event] the credential holder provides telehealth services from a location outside of Kentucky.

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver chiropractic services or who practices telehealth chiropractic:

- (1) Shall not engage in false, misleading, or deceptive advertising of telehealth chiropractic services;
- (2) Shall comply with the code of ethical conduct and standards of practice established in[Ethics,] 201 KAR 21:015;
- (3) Shall not allow fee-splitting through the use of telehealth chiropractic services in compliance with KRS 312.220(2)(b); and
- (4) Shall conform to KRS Chapter 312 and 201 KAR 21:001 through 21:105[the statutes and regulations] governing the provision of chiropractic services in Kentucky and in consideration of the scope of practice relating to chiropractic.

Section 6. A person holding a license as a chiropractor who provides telehealth services to a person physically located in Kentucky shall be subject to the laws and administrative regulations governing chiropractic services in Kentucky.

CONTACT PERSON: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

BOARDS AND COMMISSIONS
Board of Physical Therapy
(As Amended at ARRS, August 8, 2023)

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 a board-provided[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 and[. 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 and[. 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 include[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 Therapy (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, which shall be awarded as:

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. ~~[the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensure agency. 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) Being a 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) Being a 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 include[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;]~~

~~[(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;

~~[(g)]~~ Participation as a mentor or mentee in a mentorship program developed by APTA KY. A maximum of two (2) ~~[one (1)]~~ contact hours ~~[hour]~~ shall be awarded per year and a maximum of four (4) ~~[two (2)]~~ contact hours per biennium; or

~~[(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 shall [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. ~~[a.]~~ Age;

b. ~~[b.]~~ Disability;

c. ~~[c.]~~ Medical condition;

d. ~~[d.]~~ Financial condition; or

e. ~~[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 shall [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", July 2023 ~~[June 2012]~~ ~~[September 2016]~~, 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.

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

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, August 8, 2023)**

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 ~~a~~**[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~~**[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, ~~including the~~**[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; ~~and~~

(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; ~~and~~

(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) ~~Keep~~ 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;^[7]

(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)(b)(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.^[7]

(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
 4. 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 CO₂; and

b. A disposable colormetric 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 [LJ] 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.

CONTACT PERSON: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 8, 2023)**

301 KAR 6:001. Definitions for 301 KAR Chapter 6.

RELATES TO: KRS Chapter 235, 33 C.F.R. 175.15

STATUTORY AUTHORITY: KRS 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 requires the Department of Fish and Wildlife Resources to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of Kentucky and to carry out the purposes of KRS Chapter 235. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 6. 46 U.S.C. Chapter 131 requires the state to comply specific elements of applicable federal laws and regulations which specify requirements for States RBS Program. 33 C.F.R. 175.13 defines wearable and throwable PFDs.

Section 1. Definitions.

(1) "Adequate ventilation" means ventilation that meets/met Boating Industry Association and U.S. Coast Guard requirements at the time the vessel was manufactured.

(2) "Airborne device" means a kite, parachute, or similar device that holds a person aloft while towed behind a moving vessel.

(3) "Class A" means vessels less than sixteen (16) feet in length.

(4) "Class 1" means vessels sixteen (16) feet or over and less than twenty-six (26) feet in length.

(5) "Class 2" means vessels twenty-six (26) feet or over and less than forty (40) feet in length.

(6) "Class 3" means vessels forty (40) feet or more in length.

(7) "Crossing" means a situation in which a vessel approaches another from an angle of 112.5 degrees or less from either side of the bow.

(8) "Documented by the federal government" means a vessel that has been registered with, and issued official registration documents by, the United States Coast Guard.

(9) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(10) "International diving flag" means a red flag with a white stripe running diagonally from an upper corner to the opposite lower corner.

(11) "Length":

(a) Means the longest dimension of a boat measured along the centerline from the bow to the stern; and

(b) Does not mean the length including outboard motors, swim platforms, or similar attachments.

(12) "Manually propelled racing vessel" means a racing shell, rowing scull, racing canoe, or racing kayak recognized by national or international racing associations for use in competitive racing, and not carrying or having been designed to carry equipment, except that which is solely for competitive racing.

(13) "Overtaking" means a situation in which a faster vessel approaches a slower vessel from an angle of more than 112.5 degrees from either side of the bow of the slower vessel.

(14) "Passing" means a situation in which vessels approach and pass each other from head on or nearly so.

(15) "Personal Flotation[Floation] Device or PFD" means any lifesaving device classified and approved by the regulations of the commandant of the U.S. Coast Guard. "Type I" means a personal flotation device:

[(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having more than twenty (20) pounds of buoyancy.

(16) "Type II" means a personal flotation device:

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(17) "Type III" means a personal flotation device:

(a) Designed to keep a conscious person in a vertical or slightly

backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.]

(16) [(48)] "Throwable personal flotation device" means a PFD designed to be thrown to someone in the water. "Type IV" means a personal flotation device:

(a) Designed to be thrown to a person in the water and not worn; and

(b) Having at least sixteen and one-half (16.5) pounds of buoyancy.

(19) "Type V" means a special use personal flotation device intended and approved by the U.S. Coast Guard for specific activities.]

(17) [(20)] "Water skis" means rigid or inflatable skis, kneeboards, tubes, wakeboards, or similar devices.

(18) [(24)] "Water skiing" means:

(a) The act of riding in or upon water skis while being towed behind a moving vessel or propelled by a boat's wake or while riding on or in a boat's wake directly behind a vessel that is underway; or

(b) Barefoot skiing.

(19) "Wearable personal flotation device" means a PFD designed to be worn or otherwise attached to the body.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 8, 2023)**

301 KAR 6:020. Boating safety equipment.

RELATES TO: KRS 235.205, 33 C.F.R. 83, 46 C.F.R. 25

STATUTORY AUTHORITY: KRS 235.200, 235.280, 33 C.F.R. 83, 46 C.F.R. 25]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 requires the Department of Fish and Wildlife Resources to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of Kentucky and to carry out the purposes of KRS Chapter 235. KRS 235.200 authorizes the department to promulgate administrative regulations relating to safety equipment for vessels [prohibits the operation of vessels without required equipment and authorizes the department to promulgate administrative regulations regarding this equipment. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the requirements for boating safety equipment in Kentucky. 33 C.F.R. 83 establishes the federal navigation requirements as they pertain to steering and sailing, lights and shapes, and sounds and light signs. 46 C.F.R. 25 establishes the federal safety requirements as they pertain to navigation and shipping vessels]. This administrative regulation establishes the requirements for legal boating safety equipment in Kentucky.

Section 1. Engine Safety Equipment Requirements.

(1) Except as provided in subsection (2) of this section, a person shall not operate a vessel with an enclosed engine without effective U.S. Coast Guard-approved flame arresters on carburetors pursuant to 46 C.F.R. 25.

(2) A person may operate the following without flame arresters:

(a) An outboard engine; or

(b) A vessel with an engine completely open by design and not originally equipped with Underwriters Laboratory or U.S. Coast Guard-approved flame arresters pursuant to 46 C.F.R. 25.

(3) A person shall not operate a vessel without adequate ventilation of bilges, engine compartments, fuel compartments or other enclosures.

(4) A person shall not operate a vessel originally equipped with

a carburetor drip pan without the drip pan in place and maintained in a functioning condition.

(5) A person shall not operate vessels whose bilges are not maintained free from oil or grease.

Section 2. Lighting Equipment.

(1) Between actual sunset and sunrise:

(a) Power driven boats less than sixty-five and six-tenths (65.6) feet in length whether operating or adrift, including sailboats operating under engine power, shall have:

1. Red and green sidelights. The red and green sidelights shall:

a. Have a red light indicating the port, or left side of the boat, and a green light indicating the starboard, or right side of the boat;
b. Be visible to another boat approaching from the side or head on;

c. Be visible from at least one (1) mile on a clear, dark night if the boat is less than thirty-nine and four tenths (39.4) feet in length; and

2. Either:

a. An all-around white light which shall be higher than the sidelights; or

b.

(i) A white masthead light that shines forward; and

(ii) A white stern light visible from the rear of the boat.

(b) An operator of a manually-powered vessel or sailboat less than twenty-two (22) feet, nine (9) inches in length shall:

1. Carry aboard and have immediately available for use a white light of sufficient intensity to illuminate the vessel and its occupants; and

2. Display the white light in time to prevent a collision from an approaching vessel.

(c) A person operating or responsible for a vessel anchored in a normal navigation channel or passageway shall display a white light visible in a 360 degree arc.

(2) Combination or separate red and green lights shall:

(a) Have an arc of visibility extending from dead ahead to 112.5 degrees on either side of the vessel;

(b) Show the red light on the port side, and the green light on the starboard side, of the vessel; and

(c) Be visible at a distance of at least one (1) mile on a dark night with clear atmosphere.

(3) White lights required by this section shall be visible at a distance of at least two (2) miles on a dark night with clear atmosphere.

(4) On a vessel under way between sunset and sunrise, an operator shall not display other lights which could be mistaken for the lights specified in this section.

Section 3. Signaling Devices.

(1) An operator of a Class 1 or larger vessel shall have on board a hand-, mouth-, or power-operated signaling device:

(a) Capable of producing a blast of two (2) seconds duration; and

(b) Audible for:

1. One-half (1/2) mile for Class 1 vessels.

2. One (1) mile for Class 2 vessels.

3. One and one-half (1-1/2) miles for Class 3 vessels.

(2) Nothing in this administrative regulation shall exempt a vessel from additional sound devices required by the U.S. Coast Guard pursuant to 33 C.F.R. 83.

Section 4. Personal Flotation Devices.

(1) Pursuant to 46 C.F.R. 25, an operator of a Class 1, 2, or 3 recreational vessel shall have on board a minimum of:

(a) One (1) ~~wearable~~ Type I, Type II or Type III personal flotation device for each person on board the vessel; and

(b) Except for canoes or kayaks, one (1) ~~throwable~~ Type IV personal flotation device per vessel.

(2) An operator of a Class A recreational vessel shall have on board for each person a minimum of one (1) wearable personal flotation device; ~~[-]~~

~~[(a) Type I;~~

~~(b) Type II; or~~

~~(c) Type III personal flotation device.]~~

(3) ~~Each wearable~~ [A] personal flotation device shall be:

(a) Approved by the U.S. Coast Guard pursuant to 46 C.F.R. 25;

~~[and]~~

~~(b) In good and serviceable condition; [-]~~

~~[(4) A Type I, II, or III personal flotation device shall be:]~~

~~(c) [(a)] Of appropriate size for the wearer; [-and]~~

~~(d) [(b)] Readily accessible; [-]~~

~~(e) Used in accordance with any requirements on the approval label; and~~

~~(f) Used in accordance with any requirements in its owner's manual if the approval label refers to the[such] a manual.~~

~~(4) [(5)] A throwable [Type IV] personal flotation device shall be immediately available for use.~~

~~(5) [(6)] The following shall be exempt from the personal flotation device requirements of this section:~~

~~(a) Manually propelled racing vessels; or~~

~~(b) Sailboards.~~

~~[(7) An operator may substitute a Type V personal flotation device for another required personal flotation device, if the Type V device:~~

~~(a) Is approved by the U.S. Coast Guard for the type of vessel and activity in which the vessel is being used pursuant to 46 C.F.R. 25; and~~

~~(b) Is being used according to the approved conditions on the label.]~~

Section 5. Fire Extinguishers.

(1) Pursuant to 46 C.F.R. 25, an operator of a vessel which contains either butane gas, propane gas, kerosene, gasoline, or a petroleum-consuming device shall have the following on board:

(a) For a Class A or Class 1 vessel, one (1) B-1 fire extinguisher;

(b) For a Class 2 vessel:

1. With fixed systems, one (1) B-1 fire extinguisher;

2. Without fixed systems, two (2) B-1 fire extinguishers;

(c) For a Class 3 vessel with fixed systems:

1. Two (2) B-1 fire extinguishers; or

2. One (1) B-2 fire extinguisher; or

(d) For a Class 3 vessel without fixed systems:

1. Three (3) B-1 fire extinguishers; or

2. One (1) B-1 and one (1) B-2 fire extinguisher.

(2) An operator shall:

(a) Maintain fire extinguishers in workable condition; and

(b) Have fire extinguishers available for immediate and effective use.

Section 6. An operator shall not display flashing, rotating, or oscillating red lights on a vessel except for a vessel operated:

(1) For the purpose of firefighting or rescue by the U.S. Coast Guard;

(2) By the Commonwealth of Kentucky;

(3) By a county government;

(4) By a city government; or

(5) By another government agency.

Section 7. Vessels Without Required Safety Equipment.

(1) If a department conservation officer observes a vessel operating without the safety equipment established in this administrative regulation, the operator shall[may] be directed to take whatever immediate and reasonable steps are necessary to correct the deficiency, including returning to a mooring until the situation creating the unsafe condition is corrected.

(2) If a vessel is directed to return to a mooring, the officer shall[may] affix a notice to the vessel:

(a) Indicating the nature of the unsafe condition; and

(b) Requiring its correction before the vessel is further operated.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 8, 2023)**

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 150.025(1)(h) authorizes the Kentucky Department of Fish and Wildlife to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.0242 authorizes the department to promulgate administrative regulations relating to~~[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 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. This administrative regulation establishes requirements relating to the procurement of architectural and engineering services.

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~~~~[Federal]~~ Architect – Engineer Qualifications ~~form~~~~[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~~~~[Federal]~~ Architect – Engineer Qualifications ~~form~~, Standard Form 330.

(5) A firm desiring to be considered for an award as a prime ~~consultant~~ 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 ~~rejected~~~~[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. Department personnel shall be required to:

(1) ~~Prioritize~~~~[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) ~~Be honest and truthful~~~~[Strive for honesty and truth]~~ in contracting;

(5) ~~Reject~~~~[Denounce]~~ all forms of attempted 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 ~~staff~~~~[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 ~~the~~~~[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 ~~staff~~~~[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/reference/forms/architectengineer-qualifications> [<https://www.gsa.gov/Forms/TrackForm/32994> for the "Architect – Engineer Qualifications"].

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Internal Investigation Branch
(As Amended at ARRS, August 8, 2023)**

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 15.334, 15.383, 61.300, 61.900-61.930, 61.990, 61.991, 62.010, 62.990

STATUTORY AUTHORITY: KRS ~~61.902~~, [61.904]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.902 authorizes the Secretary of the Justice and Public Safety Cabinet to commission special law enforcement officers. KRS 61.904 requires the Secretary to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 61.900(3).

(2) "Governmental unit" means the unit or agency of state, county, city, or metropolitan government or other governmental entity authorized by KRS 61.900(6) or 61.902 to employ SLEOs["Kentucky Law Enforcement Council" or "KLEC" means the administrative body established in KRS 15.315].

(3) "Secretary" is defined by KRS 61.900(5).

(4) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(5) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Internal Investigations Branch, 125 Holmes Street, Frankfort, Kentucky 40601[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond, Kentucky 40475].

(6) "Special Law Enforcement Officer" or "SLEO" is defined by KRS 61.900(6).

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a SLEO[special law enforcement officer] pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements established in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer.

(1) An applicant shall meet [all of] the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete, signed and notarized Special Law Enforcement Officer (SLEO) Application Forms[SLEO Application Forms] (SLEO-1).

(3) The governmental unit shall submit both application forms to the [Justice and Public Safety Cabinet] SLEO program administrator.

(4) The application forms shall contain [~~the following information~~].

(a) The name, address, telephone number, and detailed

personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false or misleading information, or withholding of information requested on the application or by the cabinet investigator may be grounds for rejection without further consideration.

Section 4. Additional Requirements.

(1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO program administrator [~~the following with his or her application~~].

(a) A copy of the applicant's high school diploma, GED, official college transcript, or college degree[or GED];

(b) A [certified] copy of the applicant's certified birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within [the last] thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. The form[~~it~~] shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has successfully completed first aid and cardiopulmonary resuscitation (CPR) training provided according to the American Heart Association or the American Red Cross requirements and is certified in first aid and CPR; and

(h) The application fee required by KRS 61.908.

(2) [~~If not on file from a previous application,~~] An applicant shall be fingerprinted by an approved vendor. The governmental unit shall contact the SLEO program administrator for information related to an approved vendor[at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601 or at a local law enforcement office].

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator or assigned cabinet investigator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit shall submit to the cabinet the SLEO Acknowledgment Form, SLEO-4, which indicates that the applicant[~~he~~]:

(a) [Has-]Received, read, and understands:

1. Provisions of the SLEO Act, KRS 61.900-61.930;

2. Administrative regulations in 500 KAR Chapter 2;

3. Penalties imposed for violating the SLEO Act and its administrative regulations; and

4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990; and

(b) Acknowledges that his or her[~~the applicant's~~] [his] authority is limited and restricted under the SLEO Act[; and

(c) ~~Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.140 or meets the requirements of 18 U.S.C. Section 926B or Section 926C.]~~

Section 5. Fees.

[~~(1)~~] All fees required by KRS 61.908 shall be:

[~~1~~] Submitted with the application form; [~~Paid in advance and are~~]

[~~2~~] Nonrefundable; and [~~3~~]

[~~3~~] [~~(2)~~] [Fees shall be-] Paid in the form of a check or money order made payable to the Kentucky State Treasurer.

Section 6. Approval of Application.

(1) If the applications and all required documents are in order,

and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice Training concerning any training the applicant needs ~~[in order]~~ to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant who has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application.

(1) If the application is incomplete, or otherwise defective in some way other than those referenced in Section 3(5) of this administrative regulation, or in conflict with the SLEO Act or its administrative regulations, 502 KAR Chapter 2, the cabinet shall notify the governmental unit.

(2) Upon notice that an applicant's application is incomplete or otherwise defective, the governmental unit shall notify the applicant. An application may be corrected and resubmitted at no additional cost if it is resubmitted to the SLEO program administrator within sixty (60) days of the date the governmental unit[applicant] is sent notice of the deficiencies by the SLEO program administrator.

(3) An application that has been falsified ~~[or]~~ contains material omissions, or contains incomplete information may be rejected, and the applicant shall be prohibited from submitting an application for commission as a SLEO for one (1) year.

Section 8. The Grant of the Commission and the Required Oath of Office.

(1) A commission for a ~~SLEO[special law enforcement officer]~~ shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been recommended, a commission certificate ~~[and the recommendation]~~ shall be forwarded by the SLEO program administrator to the secretary or the secretary's designee for review.

(b) After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the SLEO[s]officer[s] file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted.

(a) One (1) of the original applications and two (2) County Clerk Oath verification forms (SLEO-6) shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(b) The governmental unit shall arrange for the appointed applicant to take the oath of office.

(3) The appointed applicant shall take:

(a) One (1) of the applications and the two (2) County Clerk Oath verification forms to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both County Clerk Oath verification forms[SLEO-6s];

(b) Retain the application and one (1) of the County Clerk Oath verification forms, for filing purposes in the county clerk's office; and

(c) Give the second County Clerk Oath verification form, signed by the clerk, to the applicant.

(5) The applicant shall return the second County Clerk Oath verification form, signed by the Clerk, to the governmental unit. The governmental unit shall return it to the ~~[cabinet]~~SLEO program administrator within thirty (30) days of the grant of the commission to indicate that the oath was administered and that the application and oath verification form are filed with the county clerk.

(6) Upon receipt of the oath verification, the commission certificate shall be forwarded by the cabinet to the governmental unit

whose property is to be protected.

(7) If the second County Clerk Oath verification form, signed by the clerk, is not returned to the SLEO program administrator within thirty (30) days of the granting of the commission, the commission shall be ~~[null and]~~void and the applicant shall be required to repeat the application process.

(8) The applicant shall not exercise the authority of a SLEO until the governmental unit has received the commission certificate from the cabinet.

(9) The commission certificate shall be kept by the governmental unit so long as the SLEO[officer] is employed or until his or her authority is terminated as a result of the expiration of the commission term or by action of the governmental[government] unit or the secretary or the secretary's designee.

(10) The SLEO Commission shall be issued for a period of two (2) years, or five (5) years if the SLEO is employed as a facilities security officer with the Kentucky State Police pursuant to KRS 16.187, if the SLEO[officer] continues to meet all statutory and regulatory criteria.

(11) After the governmental unit has received the SLEO commission certificate, the governmental unit shall issue an identification card that shall[which is to] be carried by the SLEO ~~[officer]~~ whenever he or she is acting under the authority of KRS 61.900-61.930.

(12) The identification card shall be:

(a) Presented as requested by any duly sworn peace officer or cabinet official;

(b) Subject to control by the cabinet; and

(c) In compliance[Comply] with Section 11(4) of this administrative regulation.

(13) If for any reason a SLEO ~~[officer]~~is terminated or otherwise relieved of his or her duties as a SLEO ~~[officer]~~by the governmental unit or the cabinet, he or she shall immediately return the[this] identification card to the SLEO's[officer's] governmental unit.

(14) The SLEO commission certificate shall be held by the governmental unit and shall:

(a) Be available for inspection by the SLEO program administrator or his or her designee;

(b) Remain the property of the cabinet; and

(c) Be returned upon the SLEO's[officer's] authority being withdrawn for any reason.

Section 9. Special Provisions.

(1) Training pursuant to KRS 61.906(2)(f)2. A SLEO applicant may request approval from the Kentucky Law Enforcement Council (KLEC) for eighty (80) or more hours of training, if that training is not currently approved, by providing documentation verifying successful completion of the training and detailed information concerning the contents of the training to the SLEO program administrator. The training approval request shall be provided to the KLEC to review the request and make a decision.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, military records, or examination records that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

(3) Firearms and First Aid Proficiency. A SLEO applicant shall:

(a) Be certified in first aid and cardiopulmonary resuscitation (CPR) through training provided according to the American Heart Association or the American Red Cross requirements; and

(b) One (1) of the following:

1. Meet the marksmanship qualification requirements for a retired peace officer as specified in KRS 237.140; or

2. Fire twenty (20) rounds at an adult size silhouette target at a range of twenty-one (21) feet, with a handgun, and shall hit the target not less than eleven (11) times. The range test shall be conducted and certified by a firearms instructor trainer or certified firearms instructor trained pursuant to KRS 237.122 or by other firearms instructor program provided by the Department of Criminal Justice Training.

Section 10. Renewals.

(1) A letter of intent from the governmental unit stating its request to renew a commission, ~~[and]~~two (2) complete signed and

notarized SLEO Renewal Application Forms (SLEO-5), and the renewal application fee required by KRS 61.908(2) for each individual involved shall be filed with the SLEO[cabinet] program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall be fingerprinted by an approved vendor and undergo a background investigation to bring the applicant's[his] records up-to-date.

(3) In addition to the requirements set forth above in this section, for each renewed commission granted, the governmental unit and SLEO applicant shall comply with the requirements set forth in Section 8 of this administrative regulation.

Section 11. Governmental Units Employing SLEOs[SLEO Officers] - Records, Reports, and Responsibility.

(1) All governmental units employing SLEOs[SLEO officers] shall:

(a) Keep their files current as to the expiration date on each SLEO's[officer's] commission;

(b) Keep the individual SLEO's[officer's] commission certificates on file, to be returned to the cabinet upon termination of the SLEO[officer] and his or her authority;

(c) Provide proof to the SLEO program administrator[coordinator] at the time of request for renewal that its SLEOs:

1. Are currently certified in First Aid and CPR; and
2. Have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or email to the SLEO program administrator by June 30 of each year:

1. A current list of all active SLEO personnel; and
2. The number of arrests made or citations issued by the agency the previous calendar year.

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930, 61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEOs[SLEO officers].

(3) Complaints or unusual incidents involving SLEOs[SLEO officers] shall be handled by the governmental unit whose public property is being protected by the SLEO [officer-]involved except:

(a) The governmental unit shall notify the [cabinet-]SLEO program administrator by:

1. Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEOs[SLEO officers]; and

2. A follow-up written report to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, stating the details of the incident and listing any action taken by the governmental unit; and

(b) If formal charges are pending, the governmental unit [or agency-]shall advise the SLEO program administrator as to the specific charge, trial date, and the final disposition of the charge.

(4) The governmental unit shall issue each SLEO[officer] an identification card upon the individual's appointment. The identification card shall be:

- (a) Encased in plastic;
- (b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and
- (c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card is[has been] commissioned as a Special Law Enforcement Officer[(SLEO)], pursuant to KRS 61.902 and[As a SLEO, the holder of this card is] deemed to be a peace officer within the meaning of KRS 527.020 with[and may exercise] the powers set forth[of a peace officer] in [accordance with-]KRS 61.900 to 61.930,"; and

2. The other side containing a full-faced photograph of the SLEO[officer] with his or her:

- a. Name;
- b. Identification or notation that the SLEO[officer] has been commissioned a "Special Law Enforcement Officer";
- c. Governmental unit employing the SLEO[officer];

d. Badge number, if any; and

e. Chief, supervisor, or employer's signature [of the SLEO's][officer's][chief, supervisor, or employer].

(5) The governmental unit shall obtain and destroy the identification card from any SLEO[officer] whose employment is terminated.

Section 12. Violations.

(1) All governmental units utilizing SLEOs[SLEO's] shall be subject to inspection and investigation by the cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the secretary [of the cabinet] or the secretary's designee that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions.

(1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The SLEO program administrator shall notify the secretary or the secretary's designee of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

(a) SLEO; and

(b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by regular, first-class mail and by certified mail, return receipt requested to their last known addresses.

(4) The SLEO may request an administrative hearing before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the SLEO program administrator within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary or the secretary's designee shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within [the]thirty (30) days[day-time-period].

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(8) If a SLEO commission is suspended or revoked:

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO[officer];

(b) The governmental unit responsible for the SLEO[officer] shall forward a letter to the SLEO[officer] stating that:

1. His or her commission has been revoked or suspended; and
2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the SLEO identification card, the governmental unit shall destroy it; and

(d) The SLEO program administrator shall notify the county clerk in the SLEO's[officer's] county of jurisdiction of the revocation or suspension.

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving SLEOs[SLEO's][SLEO officers] shall be handled by the governmental unit whose public property is being protected by the SLEO [officer-]involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) The SLEO program administrator or other assigned officers may investigate [any and all-]complaints or unusual incidents involving SLEOs[SLEO officers][,] if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR

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Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO [officer] involved.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Special Law Enforcement Officer (SLEO) Application Form", SLEO-1, 2023[3/2019];

(b) "Authority to Release Information Form", SLEO-2, 2023[3/2019];

(c) "Letter of Intent Form", SLEO-3, 2023[3/2019];

(d) "SLEO Acknowledgment Form", SLEO-4, 2023[3/2019];

(e) "Special Law Enforcement Officer (SLEO) Renewal Application Form", SLEO-5, 2023[3/2019]; and

(f) "County Clerk Oath", SLEO-6, 2023[3/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Internal Investigations Branch, 125 Holmes Street, Frankfort[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond], Kentucky 40601[40475], Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed on the Justice and Public Safety Cabinet Web site in the SLEO area at <https://justice.ky.gov/Departments-Agencies/iib/Pages/sleo.aspx> or <https://justice.ky.gov/about/pages/lrcfilings.aspx>.

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.

JUSTICE AND PUBLIC SAFETY CABINET Internal Investigations Branch (As Amended at ARRS, August 8, 2023)

500 KAR 3:010. Definitions.

RELATES TO: KRS 61.360

STATUTORY AUTHORITY: KRS 15A.160, **61.360**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or the Governor's agent to appoint Special Local Peace Officers. This administrative regulation establishes definitions for[defines terms used in] 500 KAR Chapter 3 regulating commissions for Special Local Peace Officers[which pertain to the administration of KRS 61.360, "The Special Local Peace Officer Act", by the Governor or his designee].

Section 1. Definitions.

(1) "Cabinet" ~~is~~**means the Justice and Public Safety Cabinet as** defined by KRS 61.900(3).

(2) "Commission" means a commission issued to an individual by the Secretary of the Justice and Public Safety Cabinet, entitling the individual to perform special local peace officer duties on specific private property.

(3) "Private property" means specific, identified real property currently owned by an individual or entity[company, or agency] in the Commonwealth of Kentucky.

(4) "Property owner" means:

(a) ~~An~~**The** individual in the Commonwealth of Kentucky seeking appointment of a commission of a special local peace officer to protect the premises of a specific, identified private property that he or she owns; or

(b) A duly authorized agent or officer of an entity seeking appointment of a commission of a special local peace officer to protect the premises of a specific, identified private property owned by an entity rather than a person "SLPO" means Special Local

Peace Officer].

(5) "SLPO Act" means the Kentucky Revised Statutes cited in 500 KAR 3:020, Section 2(7)(a).

(6) "SLPO program administrator" means the person designated or[administrator] appointed by the Secretary of the [Justice]-cabinet to administer the Special Local Peace Officer Program whose address is: SLPO Program Administrator, Justice and Public Safety Cabinet, Internal Investigations Branch ("IIB"), 125 Holmes Street, Frankfort, Kentucky 40601.

(7)[(6)] "Special local peace officer," or "SLPO" means an officer described in and appointed pursuant to[one who meets the requirements of] KRS 61.360 and whose duties include:

(a) The protection of specific private property from intrusion, entry, larceny, vandalism, abuse, waste, or trespass;

(b) The prevention, observation or detection of, or apprehension for, unlawful activity on specific private property[premises];

(c) The control of the operation and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific private property; and

(d) The answering of any intrusion alarm on specific private property.

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.

JUSTICE AND PUBLIC SAFETY CABINET Internal Investigations Branch (As Amended at ARRS, August 8, 2023)

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS 61.300, 61.360, 61.990, 62.010, 62.990

STATUTORY AUTHORITY: KRS 15A.160, **61.360**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or the Governor's[his] agent to appoint Special Local Peace Officers. This administrative regulation establishes the criteria and procedure for applying for a commission as a Special Local Peace Officer.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO, an applicant shall present satisfactory evidence of compliance with the conditions and requirements established in KRS 61.360.

Section 2. Application for Commission and Renewal of Commission as a Special Local Peace Officer. Applications from the property owner for an initial SLPO commission for a SLPO applicant shall be sent to the [cabinet]-SLPO program administrator and shall comply with the following requirements:

(1) An applicant shall meet ~~[all of]~~the requirements of KRS 61.360 before a commission is granted. An applicant who qualifies may hold additional commissions for different property locations.

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include ~~[the following]~~:

(a) The name of the property owner;

(b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;

(c) A certified copy of the applicant's birth certificate;

(d) Two (2) photographs of the applicant, which shall be:

1. Full face;

2. At least three (3) inches by five (5) inches in size; and

3. Taken within thirty (30) days prior to submission of the application;

(e) A copy of the applicant's military discharge or Form DD-214,

if the applicant is a veteran;

(f) The signature of the property owner;

(g) A statement of all arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies; and

(h) The notarized signature of the applicant.

(3) The ten (10) dollar application fee shall be:

(a) Submitted with the application form;

(b) Nonrefundable; and

(c) Submitted by check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the withholding of information requested on the application or by the cabinet investigator may be grounds for rejection without further consideration.

(5) ~~If not on file from a previous application,~~ An applicant shall be fingerprinted by an approved vendor. The property owner or applicant shall contact the SLPO program administrator for information related to an approved vendor at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) The application shall also contain the Authority to Release Information Form (SLPO-4) to allow the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by the SLPO program administrator or SLPO program administrator's designee [a cabinet official].

(7) The applicant shall also sign the SLPO Acknowledgment Notice Form (SLPO-5), which indicates that the applicant:

(a) ~~He has~~ Received, read, and understands:

1. KRS 61.300;

2. KRS 61.360;

3. KRS 61.991;

4. KRS 62.010;

5. KRS 62.990; and

6. The administrative regulations in 500 KAR Chapter 3;

(b) ~~He~~ Acknowledges that his or her ~~the applicant's~~ his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and

(c) ~~He understands and acknowledges that his commission as a SLPO does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.440.~~

(8) A Letter of Intent Form (SLPO-3) shall be filed with each application by the property owner giving the name of applicant and the specific private property to be protected. If the property is owned by more than one (1) person or entity, a single property owner may file. This letter shall accompany the application forms for an initial SLPO [initial] application and renewal application[or renewals].

(9) The application shall include a copy of or information to identify the bond issued as required by KRS 61.360.

(10) The applicant shall arrange for an interview with the SLPO program administrator or assigned cabinet investigator.

(11) ~~(40)~~ If the application is incomplete, or otherwise defective or in conflict with the SLPO Act, cited in subsection (7)(a) of this section or 500 KAR Chapter 3, the application shall be returned to the property owner. An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the property owner [applicant] is sent notice of the deficiencies by the SLPO program administrator.

(12) ~~For/in the case of~~ a SLPO commission renewal, the process outlined for an initial SLPO commission shall be followed. However, in lieu of two (2) SLPO 1 Forms, two (2) complete, signed, and notarized SLPO Renewal Application Forms (SLPO-7) for each applicant shall be filed with the SLPO program administrator at least sixty (60) days before the expiration date of the existing commission.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a SLPO ~~special local peace officer~~ shall be validated and granted as follows:

(1) If the applicant has successfully satisfied the requirements of the statutes cited in Section 2(7)(a) of this administrative

regulation, a commission certificate ~~[and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form]~~ shall be forwarded by the SLPO program administrator to the secretary or the secretary's designee for review. After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the SLPO's ~~officer's~~ file.

(2) If a commission is granted:

(a) The commission, one (1) application, and two (2) County Clerk Oath forms (SLPO-6) shall be forwarded by the cabinet to the property owner.

(b) The appointed applicant shall promptly take the application and the two (2) County Clerk Oath forms to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

(c) The county clerk shall then complete and sign the clerk's attestation on both County Clerk Oath forms and retain the application and one (1) of the County Clerk Oath forms for filing purposes in the county clerk's office.

(d) The applicant shall return the second County Clerk Oath form signed by the county clerk to the property owner.

(e) The property owner shall then return the second County Clerk Oath form to the ~~cabinet~~ SLPO program administrator to indicate that the oath was administered and that the application and one (1) of the County Clerk Oath forms are filed with the county clerk.

(f) The property owner shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the second County Clerk Oath form ~~is~~ to the ~~cabinet~~ SLPO program administrator. If the County Clerk Oath form is not returned within thirty (30) days, the commission shall be revoked in accordance with KRS 62.010 and 62.990.

(g) The commission certificate shall be kept by the property owner so long as the SLPO ~~officer~~ is employed or until the SLPO's ~~his~~ authority is terminated by the expiration of the commission term or action of the property owner, the ~~cabinet~~ secretary, or the ~~cabinet~~ secretary's designee.

(3) A SLPO Commission shall be issued for a period of two (2) years, if the SLPO ~~officer~~ continues to meet all statutory and regulatory criteria.

(4) After the SLPO ~~officer~~ has taken the constitutional oath of office, the property owner shall issue an identification card that shall be carried by the SLPO ~~officer~~ whenever the SLPO ~~he~~ is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or cabinet official and is subject to control by the cabinet. ~~If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or the cabinet, he shall immediately return this identification card to the officer's property owner.~~ The identification card shall be:

(a) Encased in plastic;

(b) Billfold size 2 1/4 inches x 3 1/2 inches;

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card is ~~has been~~ commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360 and ~~As a SLPO, the holder of this card is~~ deemed to be a peace officer within the meaning of KRS 527.020 with and may exercise the limited powers set forth in ~~of a peace officer granted by~~ KRS 61.360"; and

2. The other side containing a full-faced photograph of the SLPO and:

a. The SLPO's name;

b. An identification or notation that the SLPO has been commissioned as a "Special Local Peace Officer";

c. The name and signature of the property owner employing the SLPO; and

d. The SLPO's badge number, if any. ~~;~~ and

(d) [3.] Immediately returned to and destroyed by the property owner employing the SLPO if for any reason the SLPO is terminated or otherwise relieved of the duties of a SLPO by the property owner or the SLPO's commission is terminated by the cabinet. It shall be the responsibility of the property owner to obtain and destroy the identification card from any SLPO whose employment or

commission is terminated.

(5) A notice shall be forwarded to the property owner concerning any SLPO[officer] whose appointment has been suspended or revoked by the secretary or the secretary's designee. The property owner shall maintain current files and make renewal applications at least sixty (60) days prior to the commission's expiration date.

(6) The applicant shall not exercise the authority of a SLPO until the property owner has received the commission certificate from the cabinet.

(7) The SLPO commission certificate shall be held by the property owner and shall be available for inspection by the SLPO[cabinet] program administrator or SLPO program administrator's[his] designee. The commission certificate remains the property of the cabinet and shall [is to] be returned upon the SLPO's[officer's] authority being withdrawn for any reason.

Section 4. Denial of an Application.

(1) If an application for commission as a SLPO is denied, within thirty (30) days of the determination, the SLPO program administrator shall serve upon the applicant a letter setting forth the basis of the SLPO program administrator's determination.

(2) The applicant and property owner may appeal the determination [in accordance with KRS Chapter 13B]within thirty (30) days of the date of the written notice that the application has been denied. An appeal shall [be filed].

(a) Be filed in writing with the secretary or the secretary's designee; and

(b) Set forth the basis of the appeal[Within thirty (30) days of the date of the written notice that the application has been denied].

(3) Within thirty (30) days of receipt of a written appeal, the secretary or secretary's designee:

(a) May request additional information from the applicant, property owner, ~~orland~~ the SLPO program administrator;

(b) Shall consider the information provided by the applicant, property owner, ~~orland~~ SLPO program administrator; and

(c) Shall provide a written decision setting forth the factual basis in support of the determination.

(4)[(2)] An applicant who is denied a commission shall not submit another SLPO application for at least one (1) year.

Section 5. [Renewals. A Letter of Intent Form (SLPO-3) from the property owner stating a request to renew a commission and two (2) complete signed and notarized SLPO-Renewal Application Forms (SLPO-7) for each applicant involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 6.] Records, Reports, and Responsibility. [Each property owner employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:]

(1) The property owner shall maintain a file for each SLPO that includes:

(a) The SLPO's commission certificate;

(b) The expiration date of the SLPO's commission;

(c) A copy of the identification card issued to the SLPO;

(d) Any complaint concerning the SLPO with the results of the investigation; and

(e) A copy of or information to identify the bond issued as required by KRS 61.360[keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer's employment].

(2) The property owner shall post a copy of 500 KAR Chapter 3 and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPOs[SLPO officers].

(3) Complaints or unusual incidents involving a SLPO[SLPO officers] shall be handled by the property owner whose private property is being protected by the SLPO [officer] involved. However, the property owner shall notify the [cabinet]SLPO program administrator by direct verbal communication within twenty-four (24)

hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPOs[SLPO officers]. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, stating the details of the incident and listing any action taken by the property owner. If formal charges are pending, the property owner shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges.

(4) The property owner shall mail or e-mail to the SLPO program administrator by June 30 of each year:

(a) A current list of all active SLPO personnel; and

(b) The number of arrests made or citations issued by the SLPO the previous calendar year.

~~[(5) The property owner shall issue each SLPO officer an identification card upon the individual's appointment. The identification card shall be:~~

~~(a) Encased in plastic;~~

~~(b) Billfold size 2 1/4 in. x 3 1/2 in.; and~~

~~(c) Composed as follows:~~

~~1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360. As a SLPO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the limited powers of a peace officer granted by KRS 61.360"; and~~

~~2. The other side containing a full-faced photograph of the officer with his or her:~~

~~a. Name;~~

~~b. Identification or notation that the officer has been commissioned a "Special Local Peace Officer";~~

~~c. Property owner employing the officer;~~

~~d. Badge number, if any; and~~

~~e. Signature of the officer's property owner.~~

~~(6) The property owner shall be responsible for obtaining and destroying the identification card from any officer whose employment is terminated.]~~

~~[(5)][(7)] If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the cabinet of this fact and the reason for cancellation or revocation.~~

Section 6.[Section 7.] Violations. A property owner utilizing SLPO[fs] shall be subject to inspection and investigation by the cabinet or SLPO program administrator for possible violations, which may include the inspection and investigation of all files related to any SLPO commission maintained by the property owner. Violations may result in prosecution and recommendation to the secretary or the secretary's designee that the commission affected be revoked.

Section 7.[Section 8.] Revocation or Suspension of SLPO Commissions.

(1) If ~~[it is determined by]~~the SLPO program administrator determines that a disqualifying factor in KRS 61.360(1) of the SLPO Act applies to a commissioned SLPO[an active SLPO commissioned officer], the SLPO program administrator shall notify the secretary or the secretary's designee who shall revoke or suspend the commission of the SLPO[any special local peace officer], after an administrative hearing conducted in accordance with KRS Chapter 13B, if the secretary or the secretary's designee[he] determines:

(a) That the SLPO[commission-holder] does not meet, or no longer meets the requirements and conditions for the commission;

(b) That the SLPO[commission-holder] has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the cabinet; or

(c) That the SLPO[commission-holder] has violated any of the Kentucky Revised Statutes[Statutes] or administrative regulations cited in Section 2(7)(a) of this administrative regulation, or order of the secretary or the secretary's designee.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner involved to return the commission of the SLPO [officer] involved to the SLPO program administrator~~[for the cabinet]~~. The property owner responsible for

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the SLPO [officer] shall forward a letter to the SLPO [officer] involved stating that the SLPO's[his] commission has been revoked or suspended and that the SLPO[he] shall immediately return the SLPO identification card to the property owner.

(3) The secretary or the secretary's designee may temporarily suspend the commission of an SLPO prior to holding a hearing pursuant to KRS Chapter 13B if the secretary or the secretary's designee[he] believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the secretary or the secretary's designee shall hold a KRS Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLPO requests an extension for a time certain. If the SLPO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(4) The SLPO program administrator shall notify the county clerk in the SLPO's[officer's] county of jurisdiction if a SLPO's[SLPO officer's] commission has been surrendered, suspended, or revoked.

Section 8.[Section 9:] Procedures for Investigating Complaints or Unusual Incidents Involving a SLPO [Officers].

(1) Complaints or unusual incidents involving a SLPO [officers] shall be handled by the property owner whose private property is being protected by the SLPO [officer] involved. The property owner shall notify the cabinet of all incidents involving their SLPO personnel as indicated in Section 5[6] of this administrative regulation.

(2) The SLPO[cabinet] program administrator or other assigned investigator[officers] may investigate any complaints or unusual incidents involving a SLPO [officer] if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLPO [officer] involved.

Section 9.[Section 10:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)", 2023[July 1, 2010];

(b) [~~"Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008;~~]

[(e)] "Letter of Intent Form (SLPO-3)", 2023[July 28, 2008];

(c)[(d)] "Authority to Release Information Form (SLPO-4)", 2023[July 28, 2008];

(d)[(e)] "SLPO Acknowledgment Notice Form (SLPO-5)", 2023[April 29, 2009];

(e)[(f)] "County Clerk Oath" Form (SLPO-6), 2023[July 1, 2010]; and

(f)[(g)] "SLPO Renewal Application Form (SLPO-7)" 2023[July 1, 2010].

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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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 8, 2023)**

501 KAR 6:150. Eastern Kentucky Correctional Complex policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference [~~in order~~] to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Eastern Kentucky Correctional Complex.

Section 1. Incorporation by Reference.

(1) "Eastern Kentucky Correctional Complex Policies and Procedures", August 8[June 14][February 09], 2023[December 13, 2016], is incorporated by reference. Eastern Kentucky Correctional Complex Policies and Procedures include:

[EKCC 01-06-02]	[Crime Scene Camera]
EKCC 01-07-01	Institutional Tours and Group Visits of EKCC (Amended <u>8/8/23[6/14/23][2/09/23]</u>)
EKCC 01-07-03	Outside Consultation and Research (Amended 2/09/23[12/13/16])
[EKCC 01-10-02]	[Organization and Assignment of Responsibility]
[EKCC 01-10-03]	[Institutional Planning]
[EKCC 01-13-01]	[Organization of Operations Manual (Amended 8/13/02)]
[EKCC 01-13-02]	[Monitoring of Operations, Policies and Procedures]
[EKCC 01-13-03]	[Formulation and Revision of EKCC Operating Procedure (Amended 8/13/02)]
[EKCC 01-13-04]	[Meetings Conducted and Their Purpose]
EKCC 02-01-02	Inmate Canteen (Amended 2/09/23[12/13/16])
EKCC 02-02-01	Fiscal Management: Agency Funds (Amended 2/09/23[6/12/02])
[EKCC 02-05-01]	[Fiscal Management: Budget]
[EKCC 02-08-01]	[Property Inventory]
[EKCC 02-08-02]	[Warehouse Operation and Inventory Control]
[EKCC 02-08-03]	[Inventory Control, Nonexpendable Items]
[EKCC 02-08-04]	[Warehouse Policy and Procedure]
[EKCC 02-11-01]	[Purchase and Supply Requisition]
[EKCC 02-12-01]	[Fiscal Management: Audits]
EKCC 02-14-01	Screening Disbursements from Inmate Personal Accounts (Amended <u>8/8/23[2/09/23][6/12/02]</u>)
[EKCC 04-02-02]	[Advisory Training Committee]
EKCC 06-03-01	Case Record Management (Amended <u>8/8/23[2/09/23][12/13/16]</u>)
[EKCC 10-02-01]	[Special Management Unit: Operating Procedures and Living Conditions]
EKCC 10-02-04	<u>Restrictive Housing Unit and Special Management Unit: Operating Procedures and Living Conditions (Added 8/8/23[2/09/23])</u>
EKCC 11-02-01	Meal Planning (Amended 2/09/23[10/14/16])
EKCC 11-04-01	Food Service: Inspections and Sanitation (Amended 2/09/23)

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EKCC 11-04-02	Medical Screening of Food Handlers (Amended 2/09/23)
EKCC 11-05-01	Food Service: Security (Amended 2/09/23[12/13/16])
EKCC 11-07-01	Dining Room Rules (Amended 2/09/23[12/13/16])
EKCC 12-01-01	Vermin and Insect Control (Amended 2/09/23)
EKCC 12-02-01	Inmate Dress and Use of Access Areas (Amended 2/09/23[10/14/16])
EKCC 13-01-01	Pharmacy Policy (Amended 8/8/23[2/09/23][12/13/16])
EKCC 13-01-02	Self-Administration of Medication (SAM) Program (Amended 2/09/23[12/13/16])
EKCC 13-02-03	Consultations (Amended 2/09/23[10/14/16])
EKCC 13-02-04	Medical Services (Amended 6/14/23[2/09/23][9/14/05])
EKCC 13-02-05	Health Evaluations (Amended 2/09/23[12/13/16])
EKCC 13-02-06	Sick Call [General, and Dental] (Amended 2/09/23[9/14/05])
EKCC 13-05-01	HIV[Aids] and Hepatitis B: Precautions Against Infection (Amended 2/09/23[9/14/05])
EKCC 13-07-01	Serious Illness, Major Injuries, Death (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-08-01	Psychiatric and Psychological Services (Amended 6/14/23[2/09/23][12/13/16])
EKCC 13-08-02	Multidisciplinary Treatment[Psychiatric and Psychological Services] Team (Amended 6/14/23[2/09/23][10/14/16])
[EKCC 13-08-03]	[Suicide Prevention and Intervention Program (Amended 6/14/23[2/09/23][12/13/16])]
EKCC 13-08-04	Detoxification (Amended 2/09/23[10/14/16])
EKCC 13-08-05	Mental Health Services (Amended 8/8/23[6/14/23][2/09/23][Added 9/14/05])
EKCC 13-09-01	Dental Services (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-10-01	Optometric Services (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-12-02	Resident Transfer/Medical Profiles (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-13-01	Syringes, Needles and Sharps Control (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-15-01	Medical Department - General Housekeeping, Decontamination Procedures, and Biohazard Waste Procedures (Amended 8/8/23[2/09/23][9/14/05])
EKCC 13-16-01	Medical Records (Amended 2/09/23[11/8/2005])
EKCC 14-02-01	Clothing, Bedding and Personal Hygiene Supplies: [Issuance and Replacement Schedule] (Amended 2/09/23)
EKCC 14-03-01	Board of Claims (Added 8/8/23[2/09/23])
EKCC 14-04-01	Inmate Legal Services (Amended 8/8/23[2/09/23])
EKCC 14-05-01	Americans with Disabilities Act and Inmate Programs Access (Added 8/8/23[2/09/23])
[EKCC 14-07-01]	[Inmate Rights and Responsibilities]
EKCC 15-01-01	Hair and Grooming Standards: Inmate Barber Shop (Amended 2/09/23)
EKCC 16-01-01	Inmate Visiting (Amended 8/8/23[2/09/23])
EKCC 16-02-01	Inmate Correspondence (Amended 8/8/23[2/09/23])
EKCC 16-03-01	Inmate Telephone Procedures (Amended 2/09/23)
EKCC 16-05-01	Inmate Access to and Communication with EKCC Staff (Amended 8/8/23[2/09/23])

EKCC 16-05-02	Unit Bulletin Boards & Inmate TV Channel (Amended 2/09/23)
EKCC 17-01-02	Personal Property Control (Amended 8/8/23[2/09/23])
EKCC 17-02-01	Assessment and [f]Orientation (Amended 2/09/23)
EKCC 17-04-01	Inmate Reception Process (Amended 8/8/23[2/09/23]) [at the EKCC]
EKCC 17-04-02	Provisional Assessment Center Operations and Reception Program (Added 8/8/23[2/09/23])
EKCC 18-01-01	Inmate Classification (Amended 2/09/23)
EKCC 18-02-01	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 8/8/23[2/09/23])
[EKCC 18-10-01]	[Parole Progress Report]
EKCC 18-13-01	Meritorious Housing (Amended 2/09/23)
EKCC 18-13-04	Minimum Security Unit: Operating Procedures and Living Conditions (Amended 8/8/23[2/09/23][Added 8/13/02])
EKCC 19-04-01	Inmate Work Program (Amended 2/09/23)
EKCC 20-01-01	Educational Courses (Amended 8/8/23[2/09/23]) [Program]
EKCC 21-01-01	Library Services (Amended 2/09/23)
EKCC 22-02-01	Recreation and Inmate Activities (Amended 2/09/23)
EKCC 23-01-01	Religious Services (Amended 2/09/23)
EKCC 24-01-01	Social Services and Counseling Program (Amended 2/09/23)
EKCC 25-02-01	Inmate Discharge Procedure (Amended 2/09/23)
EKCC 25-03-01	Reentry[Prerelease] Preparation (Amended 2/09/23)

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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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, August 8, 2023)**

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.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)(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

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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 ~~designated~~**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 ~~creates~~**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]; and/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.

(4) The training shall include how to interact with juveniles with mental or physical disabilities.

Section 3. Emergency Response Team.

(1) The department shall establish and train emergency response teams for detention centers and youth development centers. **The training shall include how to interact with juveniles with mental or physical disabilities.**

(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.

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (As Amended at ARRS, August 8, 2023)

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 (1) 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, including:~~**direct**

(a) Sex;

(b) Race;

(c) County of origin;

(d) Admission date;

(e) Release date;

(f) Charge; and

(g) Other information as instructed.

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.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life, Managed Care
(As Amended at Interim Joint Committee on Banking and
Insurance, August 1, 2023)

806 KAR 6:072. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, 304.6, 304.15-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as established[defined] in KRS 304.1-010. KRS 304.6-140 authorizes the commissioner to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department and establishes the conditions under which the department actuary will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions. (1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners.

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners.

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force, containing the projection scale AA, using the methodology established in Section 4(3)(i)(ii) of this administrative regulation.

(4) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx2012.

(5) "2012 Individual Annuity Reserve Table (2012 IAR Table)" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx2012-n, derived from a combination of the 2012 Individual Annuity Mortality Period (2012 IAM Period) Table and Projection Scale G2 (Scale G2), using the methodology established in Section 4(3)(i) of this administrative regulation.

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the National Association of Insurance Commissioners for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(9) "Commissioner" is defined by KRS 304.1-050(1).

(10) "Department" is defined by KRS 304.1-050(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13) "Life insurances policies, annuities, and pure endowment contracts":

(a) Means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract; and

(b) Does not mean a provision through which the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits.

(14) "Period table" means a table of mortality rates applicable to a given calendar year.

(15) "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AAx, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(16) "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, G2x, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(17) "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section 6 of this administrative regulation.

(18) "Reserve comparison" means a calculation:

(a) Setting out three (3) year tabulations of extracts from a company's valuation; and

(b) ~~[Which is]~~ Completed by plan, with subtotals by mortality table, interest assumption, and valuation method ~~that[which]~~ correspond to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the commissioner's evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting actuary, each insurer shall provide[furnish] the department actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison.

(2) Each domestic insurer shall maintain in numerical[corresponding] order[,] with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued, which shall be in readily accessible and auditable form at the domestic insurer's[its] home office.

Section 3. Valuation Principles. (1) Extraterritoriality. The commissioner shall question and may ~~[question or]~~ reject any valuation made by the insurance supervisory official of another state ~~that[which]~~ does not comply with the minimum standards as established[provided] in KRS Chapter 304.6.

(2) Nature of liabilities.

[a] The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation established[set-out] in KRS 304.6-140 through 304.6-180, shall be established[are set-out] in prospective terms.

[b]1. If ~~the[these]~~ methods established in paragraph (a) of this subsection are not possible to apply directly, retrospective methods, using accumulations at appropriate rates of interest may be used.

2. [shall be acceptable; however,] A company using these methods shall be prepared to demonstrate that these methods result in sufficient amounts to fund any obligations established[set-out] in its contracts as guarantees of future performance.

3. Obligations ~~that[which]~~ arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions. The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) shall be[are those] for the period ending June 30[July 1] for each calendar year.

(2) The actuarial guidelines shall be used, except if statutorily prohibited[as published unless specifically prohibited by statute].

(3) Mortality tables.

(a) Except as established[provided] in paragraph (b) of this

subsection, the 1983 Table "a" shall be recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as **established[provided]** in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as **established[provided]** in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as **established[provided]** in paragraph (e) of this subsection, the 2012 Individual Annuity Reserve Table (2012 IAR Table) shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely **if[when]** the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements, **such as life settlements agreed to outside of court and that do not constitute disability settlements[involving similar actions];** or

3. Settlements of long-term disability claims **in which[where]** a temporary or life annuity has been used in lieu of continuing disability payments.

(f) Except as **established[provided]** in paragraph (g) of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as **established[provided]** in paragraph (h) of this subsection, the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract.

1. The commissioner shall give consideration to the approval of other tables of mortality **that[which]** produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request.

2. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i)1. In using the 2012 Individual Annuity Reserve Table (2012 IAR Table), the mortality rate for a person age x in year (2012 + n) shall be calculated as follows:

$$q_{\begin{matrix} 2012+n \\ x \end{matrix}} = q_{\begin{matrix} 2012 \\ x \end{matrix}} (1-G_2))^n$$

2. The resulting qx_{2012+n} shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table

rate.

4. An Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) shall be calculated as follows where the qx_{1994} and AA_x are as **established[specified]** in the 1994 GAR Table:

$$q_{\begin{matrix} 1994+n \\ x \end{matrix}} = q_{\begin{matrix} 1994 \\ x \end{matrix}} (1-AA_x))^n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in Exhibit 5A of the annual statement in the year in which the change first takes place. Exhibit 5A shall show the old and the new method of valuation and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department. **[However,]** If a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval, **pursuant to subsection 3(g) of this section,** of the commissioner.

Section 5. Cost of Noncompliance. (1) If the material is not available as **established in Sections 2 and 4 of this administrative regulation[outlined above]**, the additional burden of cost for additional time required by the staff of the Department of Insurance, or its department actuary, shall be borne by the life insurance company as **established[provided for]** in KRS 304.2-290. A special examination may be ordered by the commissioner, providing for a written report to him or her together with a time and expense billing to the company so examined.

(2) If a **detailed[detail]** audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department, the commissioner may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled annual statement on a significant error, or request the company to file a corrective action plan prior to the next filed annual statement **if[when]** the resultant error is not significant.

Section 6. Qualified Actuary Requirements. (1) In **addition to Section 1(17) of this administrative regulation, in** order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2)(a) The actuary shall not meet the requirements of a qualified actuary if that person has:

1. Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

4. Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

5. Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(b) Failed to notify the commissioner of any adverse action taken against the actuary pursuant to paragraph (a)1. through 5. of this subsection by any insurance regulatory official of any other state.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "1983 Table 'a'", 1/2023;

(b) "1983 GAM Table", 1/2023;

(c) "1994 GAR Table", 1/2023;

(d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 1/2023;

(e) "2012 Individual Annuity Reserve Table (2012 IAR Table)", 1/2023;

(f) "Annuity 2000 Mortality Table", 1/2023;

- (g) "Projection Scale AA (Scale AA)", 1/2023;
- (h) "Projection Scale G2 (Scale G2)", 1/2023; and
- (i) "Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.

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.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Student Education Loan Servicers
(As Amended at IJC on Banking and Insurance, August 1, 2023)

808 KAR 16:010. Licensing, registration, renewals and fees.

RELATES TO: KRS 286.1-010, 286.12-010, 286.12-020, 286.12-030, 286.12-040, 286.12-060, 286.12-070

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, 286.12-030, 286.12-040, 286.12-070, 286.12-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.12-030(2)(a) authorizes the commissioner to prescribe the form and materials required to apply for a license under KRS Chapter 286.12. This administrative regulation establishes licensing and registration requirements for student education loan servicers and procedures for using the Nationwide Multi-state Licensing System (NMLS).

Section 1. Definitions.

- (1) "Applicant" is defined by KRS 286.12-010(2).
- (2) "Commissioner" is defined by KRS 286.1-010(1).
- (3) "Department" is defined by KRS 286.1-010(2).
- (4) "Federal student education loan" is defined by KRS 286.12-020(1).
- (5) "Student education loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. Initial Application and Notice.

(1) A person providing notice to the commissioner as a federal student education loan servicer doing business in Kentucky as of July 14[prior to December 31], 2022, shall submit:

- (a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>; and
- (b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(2) Federal student education loan servicers that begin conducting business in Kentucky after July 14, 2022, non-federal student education loan servicers, and federal student education loan servicers that also service non-federal student education loans, and federal student education loan servicers that begin conducting business in Kentucky after December 31, 2022, shall submit:

- (a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>; and
- (b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;
- (c) All documents required on the New Application Checklist available online at <http://mortgage.nationwidelicencingsystem.org>;
- (d) Either:

1. An audited financial statement prepared by a certified public accountant (CPA), in accordance with generally accepted accounting principles (GAAP), verifying a minimum net worth of at

least ~~two hundred and fifty thousand dollars (\$250,000)~~; or

2. The following CPA prepared financial statements, if the[such] request is made by the applicant and is deemed reasonable by the Commissioner based on the size, structure, and complexity of the applicant:

- a. A Reviewed financial statement; or
- b. A Compiled financial statement;
- (e) An Electronic Surety Bond online at <http://mortgage.nationwidelicencingsystem.org>, which shall:
 - 1. Include the name of the principal insured, which shall match the full legal name of applicant;
 - 2. Be to the benefit of the department; and
 - 3. Be in an amount of the lessor of:
 - a. ~~One hundred thousand dollars (\$100,000)~~; or
 - b. 0.01 percent ~~0.01%~~ ~~(.0001)~~ of the amount of the Kentucky servicing portfolio; and
- (f) A nonrefundable investigation fee of ~~five thousand dollars (\$5,000)~~.

Section 3. Renewal Applications - All Licensees.

(1) A licensee applying for an annual renewal of a student education loan servicer license, on or before December 1st ~~31st~~, shall:

(a) Submit required updates and attestations verifying that all information in the licensee's record, maintained in the NMLS operated by the State Regulatory Registry, LLC, is correct and available online at <http://mortgage.nationwidelicencingsystem.org>; and

(b) Pay the annual assessment fee to be established by commissioner's order pursuant to KRS 286.12-070(2). The minimum assessment fee shall be ~~five thousand dollars (\$5,000)~~ and the maximum assessment fee shall be ~~twenty thousand dollars (\$20,000)~~.

(2) The commissioner shall not approve an application for renewal of a student education loan servicer license if the fees, materials, or any information required by subsection (1) of this section is not received on or before December 1st.

(3) A licensee applying to reinstate a student education loan servicer license after December 1st shall submit all fees, ~~and~~ materials, and information required by subsection (1) of this section.

~~(4)~~ (3) A licensee applying to reinstate a student education loan servicer license after December 31st shall:

(a) Submit all fees, and materials, and information required by subsection (1) of this section; and

(b) Pay a late filing fee ~~in the amount~~ of ~~one thousand dollars (\$1,000)~~ ~~on or before~~ January 31st of the following year that the renewal application was due.

~~(5)~~ (4) ~~(3)~~ The commissioner shall not ~~approve~~ ~~accept~~ ~~an~~ application for ~~renewal or~~ reinstatement if ~~when~~ the application, fees, or any required information is not received ~~on or before~~ January 31st of the following year that the renewal application was due.

(6) If a licensee submits an application or fees for renewal or reinstatement of a student education loan servicer license, but fails to timely complete the application and submit the fees as required by this section, [Failure to complete the]renewal or [reinstatement application of a license shall cause] the license shall[to] automatically terminate[expire] as of January 31 of the following year that the renewal application was due[February 1st by operation of law].

Section 4. Change of address, name, control, or agent for service-All Licensees.

(1) A licensee that intends to change its address, name, or agent for service of process shall notify the commissioner in writing at least:

- (a) Ten (10) days prior to the change of address or name; and
- (b) Five (5) days prior to the change of agent for service of process.

(2) A licensee that intends to file for a change of control, as defined by KRS 286.12-010(6), shall notify the commissioner in writing within fifteen (15) days after learning of the proposed

change of control and thirty (30) days prior to the effective date of the change of control and shall submit:

- (a) For an existing licensee acquiring another licensee, a change of control fee of ~~[one thousand dollars (\$1,000)]~~; or
- (b) For all non-licensed entities, a change of control fee of ~~[five thousand dollars (\$5,000)]~~.

(3) A licensee changing its address, name, control, or agent for service of process shall update this information in NMLS within the same time periods set forth in this section.

Section 5. Annual Report - All Licensees. Each licensee shall file an annual report electronically with the commissioner, on Form SLSCR-Student Loan Servicer Call Report, on or before November 1st of each year.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Multistate Licensing System Operated by the State Regulatory Registry, LLC.

(1) A person applying for licensure, registration, renewal, or reinstatement pursuant to Sections 2, 3, ~~or~~**[and]** 4 of this administrative regulation shall electronically submit the following to NMLS, at <http://mortgage.nationwidelicensingsystem.org>, as part of the nationwide multi-state licensing system:

(a) All forms, updates, attestations, reports, and documentation required by Sections 2, 3, and 4 of this administrative regulation, as applicable; and

(b) All fees referenced in this administrative regulation.

(2) Any fees assessed by NMLS, to process the electronic submissions referenced in **Sections 2, 3, or 4 of this administrative regulation**~~(subsection (1) and (2) of this section)~~ shall be paid by the applicant.

Section 7. Incorporation by Reference.

(1) "SLSCR-Student Loan Servicer Call Report", January 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CONTACT PERSON: Catherine Falconer, Counsel, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9052, fax 502-573-8787, email Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9053, fax 502-573-8787, email Marni.Gibson@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, August 8, 2023)**

810 KAR 4:090. Race horse 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 ~~establishes~~**[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 ~~Kentucky~~**[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 ~~allowing~~**[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) ~~A~~**[No]** person owning five (5) percent or less of a horse shall ~~not 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, in accordance with/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 allow/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 establish/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.

~~[(3)]~~ [(3)] All partnership registrations shall be signed by the principal partner or by his or her authorized agent.

~~[(4)]~~ [(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.

~~[(5)]~~ [(5)] All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees, and other obligations.

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.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, August 8, 2023)

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), 230.225(5)(c), 230.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(1) requires/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) authorizes/vests in the racing commission to forcefully control/forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations establishing/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) authorizes/states that the racing commission to recommend/shall be responsible for

~~recommending~~ tax incentives and ~~to implement~~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 2:004.]

~~[(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)]~~ "KTOB" 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]~~, contingent on~~[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, if provided the advertising charges are consistent with the intent of the KTDF. Approval of any advertising payment shall be contingent on~~[subject to]~~ the recommendation of the KTDF Advisory Committee and the approval of the commission.

~~(6)~~~~[(8)]~~ Each licensed association shall submit its~~[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.

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.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, August 8, 2023)**

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 establishing~~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. ~~It~~ 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 2:004.~~

~~[(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.~~

(4)(5)(7) "Kentucky bred" means that a horse that meets the requirements of this administrative regulation and is:

(a) A Quarter Horse registered with the American Quarter Horse Association ~~and~~ or its successor;

(b) An Appaloosa registered with the Appaloosa Horse Club ~~and~~ or its successor;

(c) An Arabian registered with the Arabian Horse Association Registry ~~and~~ or its successor; or

(d) A Paint Horse registered with the American Paint Horse Association ~~and~~ 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.]~~

~~[(5)(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.]~~

(6)(7)(11) "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 one (1)~~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 established~~provided~~ by subsection ~~(3)(4)~~ of this section.

~~(a)~~ [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.

~~(b)~~ 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]

[e.] [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:

1. 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; and

2. Documentation regarding a recipient mare's electronic horse identification microchip; and]

[e.] [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 established[set forth] in subsection (4)[(5)] of this section, in order for a horse to be eligible to earn money from the fund, it shall be "fa-Kentucky bred" as defined by Section 1 off/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]

[e.] [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 established[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]

[(e)] 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 conception[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 shall[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 that[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 non-live 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

~~racers 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~~[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. Commission approval shall be based on the standards established in Section 5(2) of this administrative regulation.

(3) The advisory committee shall review the proposed eligible races and purse structure and make a recommendation whether or not 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 or not to approve the request, based on Section 5(2) of this administrative regulation.

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, contingent on~~[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, contingent on~~[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>.

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.

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, August 8, 2023)

815 KAR 4:030. Elevator licensing.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009(3), ~~[198B.4011, 198B.4013, 198B.4023]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 through 198B.540. KRS 198B.4009(1) requires elevator contractors and elevator mechanics to be licensed. ~~[KRS 198B.4011 provides the eligibility requirements for issuance of an elevator contractor's license.]~~ KRS 198B.4013 provides the eligibility requirements for issuance of an elevator mechanic's license and an accessibility and residential elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for license renewal, inactive license, ~~[and]~~ reactivation procedures, permissible content of continuing education programs, and qualifications of continuing education providers. ~~[KRS 198B.4025 establishes the continuing education requirements for elevator license renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees.]~~ This administrative regulation establishes the licensure requirements for elevator contractors, elevator mechanics, and accessibility and residential elevator mechanics.

Section 1. General Requirements.

(1) Elevator contractor.

(a) Supervision. The elevator contractor shall provide general supervision~~[,]~~ and be primarily responsible for~~[,]~~ all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(b) Change of licensee's information. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes.

(2) Elevator mechanic.

(a) Supervision. The elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any elevator or fixed guideway system.

(b) Limitation on applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

(3) Accessibility and residential elevator mechanic.

(a) Supervision. The accessibility and residential elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the accessibility and residential elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any accessibility lift or private residential elevator.

(b) Limitation on applicability. A licensed accessibility and residential elevator mechanic shall not hold out himself or herself as complying with all the elevator mechanic experience and examination requirements.

Section 2. Initial Application Requirements.

(1) Filing the application.

(a) Elevator contractor. An applicant seeking an elevator contractor license shall submit to the department:

1. A completed Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;

4. A passport-sized color photograph of the applicant taken within the past six (6) months, except for an applicant that is a partnership, corporation, or other business entity;

5. Proof of insurance as required by KRS 198B.4027; and

6. If the elevator contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator mechanic. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

1. A completed Elevator Mechanic License Application on Form EV-4;

2. An initial license application fee of ninety-six (96) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

4. A passport-sized color photograph of the applicant taken within the past six (6) months.

(2) Termination of an application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is received by the department.

(b) At the end of one (1) year, the application shall be void.

Section 3. Reciprocity.

(1) Out of state credentials.

(a) To be eligible for reciprocity, an applicant shall have a current license, certification, or registration in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(b) The license, certificate, or registration shall be equivalent to the Kentucky license requested.

(2) Application.

(a) A reciprocal elevator license applicant shall submit the appropriate application and fee:

1. For an elevator contractor applicant, a completed Elevator

Contractor License Application on Form EV-3 and \$240; and

2. For an elevator mechanic applicant or an accessibility and residential elevator mechanic applicant, a completed Elevator Mechanic License Application on Form EV-4 and ninety-six (96) dollars.

(b) If applying for both licenses, an application fee shall be submitted for each license with each application form.

(3) Experience.

(a) Elevator contractor. A reciprocal elevator contractor applicant shall meet the experience requirement in Section 5(1) of this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator mechanic. A reciprocal elevator mechanic or an accessibility and residential elevator mechanic shall meet the experience required by KRS 198B.4013(2).

Section 4. Examination Requirements. An applicant for an elevator mechanic license or an accessibility and residential elevator mechanic license shall take and pass the examination administered in compliance with this section.

(1) Examination criteria.

(a) Elevator Mechanic. For an application pursuant to KRS 198B.4013(2)(a), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators, elevator systems, and fixed guideway systems.

(b) Accessibility and Residential elevator mechanic. For an application pursuant to KRS 198B.4013(2)(b), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(2) The department or its designee shall develop, administer, and score the examinations in subsection (1)(a) and (b) of this section.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) Except as established in subsection (8) of this section, an applicant shall pass with a score of at least seventy (70) percent on the examinations in subsection (1)(a) or (b) in this section.

(5)

(a) A request to sit for an examination shall be made directly to the testing facility approved by the department.

(b) A list of facilities and contact information shall be provided by the department to applicants upon request.

(6) The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(7) A passing score on an approved elevator examination shall be valid for a period of three (3) years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 5. Experience Requirements.

(1) Minimum experience.

(a) Elevator contractor. An elevator contractor applicant shall have a minimum of three (3) years of verifiable experience as an elevator mechanic.

(b) Elevator mechanic and accessibility and residential elevator mechanic. An elevator mechanic applicant or an accessibility and residential elevator mechanic applicant shall meet the experience required by KRS 198B.4013(2).

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by:

1. A W-2 form; or

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2. An affidavit by an elevator contractor who directed and supervised the applicant.

(b) Additional proof of experience shall be requested by the department if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 6. Inactive License Status.

(1) A licensee may request that a license be placed in inactive status.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027.

(3) A certified elevator inspector may be licensed as an elevator contractor, elevator mechanic, or accessibility and residential elevator mechanic, but shall place the license in inactive status while having an active elevator inspector certification.

(4) A licensee shall not perform elevator work while the license is inactive. Performing elevator work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 7. Renewal and Reactivation Requirements and Procedures.

(1) Filing for renewal. Licenses shall be renewed each year. To renew a license, a licensee shall submit to the department:

(a) A completed, applicable form:

1. For elevator contractors, the Elevator Contractor License Application on Form EV-3; or

2. For elevator mechanics and accessibility and residential elevator mechanics, the Elevator Mechanic License Application on Form EV-4;

(b) A renewal fee made payable to the Kentucky State Treasurer of:

1. \$240 for an elevator contractor; or

2. Ninety-six (96) dollars for an elevator mechanic or an accessibility and residential elevator mechanic; and

(c) Proof of attendance and completion of continuing education prior to the application for renewal in accordance with 815 KAR 2:010.

(2) Each application for license renewal shall be submitted by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application submitted late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 8(1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license.

(5) To reactivate an inactive license, the inactive licensee shall:

(a) Pay the annual renewal fee;

(b) Pay the reactivation fee pursuant to Section 8(3) of this administrative regulation;

(c) Comply with the continuing education requirements established in 815 KAR 2:010; and

(d) Provide current proof of insurance required by KRS 198B.4027 if an elevator contractor.

Section 8. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of an expired license shall be:

(a) Fifty (50) dollars for an elevator contractor; or

(b) Twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be:

(a) \$100 for an elevator contractor; or

(b) Twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be:

(a) \$120 for an elevator contractor; or

(b) Forty-eight (48) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Elevator Contractor License Application", Form EV-3, April 2023~~[May 2020]~~; and

(b) "Elevator Mechanic License Application", Form EV-4, April 2023~~[May 2020]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Inspection Branch~~[Section]~~, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (As Amended at ARRS, August 8, 2023)

815 KAR 7:130. Kentucky Industrialized Building Systems.

RELATES TO: KRS 198B.030~~[;—KRS]~~ 198B.062~~[;—KRS]~~ 318.134

STATUTORY AUTHORITY: KRS 198B.040(10)~~[;—KRS]~~ 198B.050(5)~~[;—KRS]~~ 198B.060(18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.050(5) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations which are necessary to implement the Uniform State Building Code or to carry out any other responsibility assigned to the department by KRS Chapter 198B. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B. ~~[KRS 198B.062 requires all buildings to be constructed according to the construction documents approved by the building official having jurisdiction of the building in accordance with KRS 198B.060.—]~~ This administrative regulation establishes the plan review and out-of-state inspection processes and requirements for industrialized building systems.

Section 1. Definitions. (1) "Certificate of acceptability" means the certificate provided to the manufacturer by the department signifying the manufacturer's ability to manufacture, import, and sell industrialized building systems within the state.

(2) "Department" means Department of Housing, Buildings and Construction.

(3) "Industrialized building system" is defined by KRS 198B.010(18).

(4) "KIBS" means the Kentucky Industrialized Building System program.

(5) "M-Seal" means a unique serialized seal applied by a third-party inspector in the factory indicating that the building was constructed in substantial compliance with the Kentucky Building Code, incorporated by reference at 815 KAR 7:120 or the Kentucky Residential Code, incorporated by reference at 815 KAR 7:125.

(6) "Quality Assurance Manual" means a document that describes a business entities' construction practices, quality assurance measures, and dispute resolution procedures.

(7) "Third-party inspection agency" means a business entity that employs Kentucky certified building inspectors and is approved to conduct out-of-state inspections for substantial compliance with the

Uniform State Building Code "Third-Party Inspector" means a building inspector certified by the department in accordance with 815 KAR 7:070 that is not employed by a local government or by the department and is authorized to conduct inspections on industrialized building systems at an out-of-state manufacturing facility.

~~[(8)]~~[(7)] "Third-party inspector" means a building inspector certified by the department in accordance with 815 KAR 7:070 that is not employed by a local government or by the department and is authorized to conduct inspections on industrialized building systems at an out-of-state manufacturing facility.

~~[(8)] "Quality Assurance Manual" means a document that describes a business entities' construction practices, quality assurance measures, and dispute resolution procedures.]~~

Section 2. Certificate of Acceptability.

(1) Any manufacturer who wishes to sell an industrialized building system for placement in Kentucky shall obtain a Certificate of Acceptability.

(2) An applicant for a manufacturer of industrialized building systems' Certificate of Acceptability shall submit to the department:

(a) A completed Form HBC KIBS-1, Application for Certificate of Acceptability for Industrialized Building Systems;

(b) Quality Assurance Manual;

(c) Proof of insurance for general liability coverage in the amount of at least:

1. \$300,000 bodily injury or death for each person;
2. \$400,000 bodily injury or death for each accident; and
3. \$100,000 for damage to property; and
- (d) A prorated certificate of acceptability fee of \$500.

Section 3. Plan submission.

(1)(a) Prior to manufacturing an industrialized building system for placement in Kentucky, a manufacturer shall submit model plans to the department for approval. Model plans are required once per model and approval shall remain in effect for the duration of the currently adopted Kentucky Building Code or Kentucky Residential Code.

(b) Applicants seeking model plan approval shall submit to the department:

1. A completed KIBS Model Application Form, Form HBC KIBS-2;
2. Construction documents; and
3. Plan review fee as established by 815 KAR 7:120 Section 3.

(2) (a) Prior to placement of every industrialized building system, except those classified as one- and two- family dwellings, site placement plans shall be submitted to the department for approval.

(b) Applicants seeking site placement plan approval shall submit to the department:

1. A completed KIBS Site Placement Application Form, Form HBC KIBS-3;
2. Site placement plans; and
3. Plan review fee as established by 815 KAR 7:120 Section 3.

Section 4. Out-of-state inspections. Prior to shipment of every industrialized building system, the structure shall be inspected for substantial code compliance by a third-party inspector, and an M-Seal shall be applied if the structure is in substantial compliance with the Kentucky Building Code or Kentucky Residential Code.

Section 5. M-Seals.

(1) A third-party inspector may request M-Seals from the department to place on inspected industrialized building systems. Requestors shall submit to the department:

(a) A completed Application for M-Seals, Form HBC KIBS-4;~~[(7)]~~ and

(b) A fee of twenty-five dollars (\$25) per M-Seal.

(2) Except for the initial request for M-Seals, a third-party inspector requesting M-Seals shall submit a completed Form HBC KIBS-5 to the department prior to receiving M-Seals.

(3) A third-party inspector shall:

(a) Affix an[a] M-Seal to a structure that substantially complies with the Kentucky Building Code or Kentucky Residential Code;

(b) Not affix an[a] M-Seal to a structure he or she has not personally inspected; and

(c) Not allow M-Seals that he or she has received from the department to be used by another.

(4) Penalties. A third-party inspector who knowingly engages in activity intended to defraud or deceive the department shall be subject to certification revocation or suspension pursuant to KRS 198B.060(16)-(17).

Section 6. Plumbing. Plumbing Systems shall be inspected and approved by a plumbing inspector employed by the Kentucky Department of Housing, Buildings and Construction, Division of Plumbing.

Section 7. Incorporation by reference.

(1) The following material is incorporated by reference:

(a) Form HBC KIBS-1, "Application for Certificate of Acceptability for Industrialized Building Systems", April 2023;

(b) Form HBC KIBS-2, "KIBS Model Application Form", April 2023;

(c) Form HBC KIBS-3, "KIBS Site Placement Application Form", April 2023;

(d) Form HBC KIBS-4, "Application for M-Seals", April 2023; and

(e) Form HBC KIBS-5, "M-Seal Verification Form", April 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, 500 Mero Street, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention (As Amended at ARRS, August 8, 2023)

815 KAR 10:060. [Kentucky]-Standards of Safety.

RELATES TO: KRS 198B.050, 227.300, 227.331, 227.715, 227.990, 234.140

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires the commissioner to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as practicable against fire loss. This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions.

(1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been corrected to the satisfaction of the inspecting authority.

(2) "Distinct fire hazard":

(a) Means a condition that poses a threat to life or property, including a condition likely to inhibit escape from danger of fire or explosion; and

(b) Does not mean a condition in which the methods of construction met the uniform state building code requirements, as applicable, at the time of construction.

(3) "Fire protection sprinkler system" is defined by KRS 198B.550(6).

(4) "NFPA" means the National Fire Protection Association.

(5) "NICET" means the National Institute for Certification of Engineering Technologies.

(6) "Unsafe Building" means a building characterized by:

(a) Deficiency in means of egress;

- (b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;
- (c) Non-compliance with the construction codes in place at time of construction;
- (d) Significant damage including as the result of:
 1. Fire;
 2. Explosion;
 3. Natural disaster;
 4. Neglect; or
 5. Vandalism;
- (e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or
- (f) Existence of structurally unsafe conditions.

Section 2. Scope.

- (1) Applicability. This administrative regulation shall apply to all buildings except one (1) and two (2) family dwellings.
- (2) Enforcement.
 - (a) State Fire Marshal. The State Fire Marshal shall:
 1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and
 2. Have exclusive jurisdiction over state-owned property and facilities licensed by the Kentucky Cabinet for Health and Family Services. A local fire chief may request authority for the inspection and enforcement responsibilities of licensed facilities from the State Fire Marshal.
 - (b) Local fire chief. Jurisdictions wherein a local fire chief is designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as established in subparagraph (a)2. of this subsection.

Section 3. Existing Buildings and Conditions.

- (1) The standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.
- (2) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as established in Chapter 34 therein.
- (3) Buildings and conditions approved under other codes.
 - (a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.
 - (b) Previous fire code. A building, or portion thereof, which was inspected, approved, or accepted pursuant to a previously adopted fire code shall:
 1. Be maintained as previously approved or accepted; and
 2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.
 - (c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be inspected by the State Fire Marshal or a designee to ensure that the structure is neither a distinct fire hazard nor an unsafe structure.
 - (4) Distinct Fire Hazards.
 - (a) A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:
 1. A fire, explosion, or asphyxiation is likely to occur;
 2. Conditions might provide a ready fuel supply to augment the spread or intensity of a fire or explosion;
 3. A building is vacant, unguarded, and open to unauthorized entry;
 4. An accumulation of combustible dust, debris, or materials is present;

- 5. Required exits or fire protection are in non-working condition or not present;
- 6. Objects are placed or installed so as to interfere with exits or exit routes;
- 7. Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;
- 8. Electrical or mechanical systems or installations create a hazardous condition; or
- 9. Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.
- (b) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.
- (c) The State Fire Marshal or a local fire chief shall use the standards established in this administrative regulation to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and this administrative regulation. In exercising authority granted, the following shall be applicable:
 1. NFPA 1, Uniform Fire Code, 2018 edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:
 - a. NFPA 403, Guide for Aircraft Rescue and Fire Fighting Operation, 2018 edition;
 - b. NFPA 1031, Standard for Professional Qualifications for Fire Inspectors and Plan Examiner, 2014 edition;
 - c. NFPA 1192, Standard on Recreational Vehicles, 2018 edition;
 - d. NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2018 edition;
 - e. NFPA 1901, Standard for Automotive Fire Apparatus, 2016 edition;
 - f. NFPA 1906, Standard for Wildland Fire Apparatus, 2016 edition;
 - g. NFPA 1925, Standard on Marine Fire-Fighting Vessels, 2013 edition;
 - h. NFPA 1963, Standard for Fire Hose Connections, 2014 edition;
 - i. NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from Fire, 2015 edition;
 - j. NFPA 5000, Building Construction and Safety Code, 2018, edition;
 - k. Code reference 1.7.2, Minimum Qualifications to Enforce this Code;
 - l. Code reference 10.2.7, Minimum Fire Prevention Inspection Frequencies for Existing Occupancies;
 - m. Code reference 13.3.2.26, High Rise Buildings;
 - n. Code reference 13.3.2.8, Existing Assembly Occupancies; and
 - o. Code reference 13.6, Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2018 Edition;
 2. NFPA 101, Life Safety Code, 2018 edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101 except Code reference 13.3.5;
 3. For sites at which consumer fireworks are offered for sale, NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition;
 4. NFPA 70, National Electrical Code, 2017 Edition; and
 5. 815 KAR 7:120, Kentucky Building Code.
- (d) Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.
- (5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120, Kentucky Building Code, if the building were being newly constructed.
- (6) Maintenance of equipment.

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations.

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed in a building without approval granted by the authority having jurisdiction.

(7) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

Section 4. Permits.

(1) State permits required. A permit shall be required from the State Fire Marshal for flammable, combustible, or hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required unless required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be established within the local government adopting legislation.

Section 5. Enforcement of Violations.

(1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state the applicable code provision violated and specify the date by which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days.

(2) Services of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.

(3) The State Fire Marshal shall commence enforcement action authorized in KRS 227.331 against any person who fails to correct a deficiency ordered to be remedied.

Section 6. Means of Appeal.

(1) Appeals of orders issued by the State Fire Marshal.

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:

1. In writing; and

2. Received by the Division of Fire Prevention, State Fire Marshal prior to the completion date specified in the notice of deficiency served.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, legal action shall be instituted pursuant to KRS Chapter 227.

(2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.

Section 7. Special Provisions.

(1) Fire incident reporting. The fire chief or highest ranking fire department officer may request investigative assistance from the State Fire Marshal.

(2) Fire protection systems testing and inspection.

(a) Reporting. Except as established in paragraph (c) of this subsection, an inspection or test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the department.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72.

2. The completed report shall be given to the owner and a copy shall be forwarded to the local fire chief or highest ranking fire department officer within ten (10) working days of the date of the

inspection.

(c) Reporting exceptions.

1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or the property owner's agent.

2. Allowable reports by owners and owner agents shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.

a. Electric single station and electric multiple station smoke alarms shall be tested monthly. A log of the test shall be kept on site for review by the fire code official.

b. Battery powered smoke alarms shall be tested weekly. A log of the test results shall be kept on site for review by the fire code official.

c. Portable fire extinguishers shall be visually inspected monthly to ensure proper charge, accessibility, and that the extinguisher hose is free of obstruction.

(d) Frequency. Periodic testing and inspection of each fire suppression and each alarm system shall be performed as established in subparagraphs 1. through 3. of this paragraph.

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively.

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the department on a Form FPS 33-01, Application for Fire Alarm Systems Certification, and shall:

a.

(i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an examination provider approved by the department;

b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the five (5) year period immediately preceding application;

c. Pay an annual certification fee of fifty (50) dollars for each classification applied for; and

d. Submit a passport-sized color photograph with the application.

2. For renewals of fire alarm inspector certification, an applicant shall:

a. Submit a completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, May 2020;

b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;

c. Submit a passport-sized color photograph with the renewal application; and

d. Provide proof of:

(i) [Provide proof of] Six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) [Provide proof of] Current NICET certification.

3. Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification or renewal for:

a. Failure of a certified fire alarm inspector to conduct an inspection in accordance with the NFPA 72 standard;

b. Submission of false inspection reports;

c. Performing inspections without first having been certified by the department as a fire alarm inspector; or

d. Making a false or misleading statement on an application for certification or renewal.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) NFPA 1, "Uniform Fire Code", 2018 edition;
- (b) NFPA 101, "Life Safety Code", 2018 edition;
- (c) NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 Edition;
- (d) NFPA 70, "National Electrical Code®", 2017[2018] edition;
- (e) FPS 33-01, "Application for Fire Alarm Systems Inspector Certification", April 2023[May 2020]; and
- (f) FPS 33-02, "Renewal Application for Fire Alarm Systems Inspector Certification", April 2023[May 2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, August 8, 2023)

815 KAR 25:020. Recreational vehicles.

RELATES TO: KRS 227.550 - 227.665

STATUTORY AUTHORITY: KRS 227.570, 227.590, 227.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590(1) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations reasonably required[necessary] to effectuate the provisions of KRS 227.550 to 227.660[and carry out the department's responsibility as a state administrative agency]. KRS 227.570(1)(a) requires the department to promulgate administrative regulations establishing a process for licensing retailers and issuing certificates of acceptability to qualifying manufacturers. KRS 227.620(2) requires the department to promulgate administrative regulations establishing application and fee requirements for a retailer's license. KRS 227.620(4)(a) requires the department to establish fees for a retailer's license, a manufacturer's ~~[""]~~certificate of acceptability, ~~[""]~~ and ~~[""]~~Class B, ~~[""]~~ ~~[""]~~Class B1, ~~[""]~~ and ~~[""]~~Class B2 ~~[""]~~ seals, in accordance with KRS 227.620(4)(a), 1. to 4. This administrative regulation establishes the requirements for retailers to obtain a license to sell recreational vehicles and the standards for issuing a certificate of acceptability to manufacturers of recreational vehicles.

Section 1. Standard for Recreational Vehicles.

~~[(1)]~~ All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable standards set forth in the NFPA 1192 Standard on Recreational Vehicles.

Section 2. Licensed Retailers. (1) Application. An applicant for a recreational vehicle retailer license shall submit to the department:

- (a) A completed Form HBC RV-2 Recreational Vehicle Retailer Application;
 - (b) A fee in the amount of \$200 for one (1) full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and
 - (c) Proof of liability insurance naming the department as the certificate holder in the minimum amount of at least:
 - 1. \$200,000 bodily injury or death for each person;
 - 2. \$300,000 bodily injury or death for each accident; and
 - 3. \$100,000 property damage.
- (2) Application review period. All licenses shall be granted or denied in accordance with KRS 227.620(3).
- (3) Certified Retailer. A licensed retailer may complete

inspections for the public if the retailer qualifies as a certified retailer.

(a) An applicant to become a certified retailer shall complete and submit to the department Form HBC MH/RV-2 Request for Approval to Inspect.

(b) A certified retailer shall not:

- 1. Perform negligent inspections or repairs on a unit; or
- 2. Apply the wrong seal to a unit.

(4) Out-of-state retailers. To inspect and apply Kentucky seals for used recreational vehicles that are sold by out-of-state retailers for delivery into Kentucky, an out-of-state retailer shall be a Kentucky certified retailer.

(5) Periodic reports.

(a) A retailer shall maintain a record of all new or used units sold to include the ~~[the following]~~:

- 1. Serial numbers;
- 2. B seal numbers;
- 3. Date manufactured;
- 4. Make of recreational vehicle; and
- 5. ~~[The]~~ Name and address of the purchaser.

(b) The retailer shall make the report available to any department employee upon request.

Section 3. Certificate of Acceptability.

(1) Certificate of acceptability requirement. A manufacturer shall not manufacture, import, or sell any recreational vehicle in the Commonwealth unless the manufacturer has received a certificate of acceptability issued by the department.

(2) Requirements for issuance. An applicant for a certificate of acceptability shall submit to the department:

- (a) A completed Form HBC MH/RV-1 Application of Certificate of Acceptability;
- (b) Its in-plant quality control systems;
- (c) An affidavit certifying compliance with the applicable standards, such as NFPA 1192 as adopted through REVA;
- (d) A \$500 certification of acceptability fee for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by check or money order, made payable to the Kentucky State Treasurer; and
- (e) Proof of general liability insurance to include lot and completed operations insurance in the minimum amount of at least:
 - 1. \$300,000 bodily injury or death for each person;
 - 2. \$400,000 bodily injury or death for each accident; and
 - 3. \$100,000 property damage.

(3) In-plant quality control. To obtain in-plant quality control approval, a manufacturer shall submit to an inspection by the department for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain ~~[the following]~~:

- (a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches.
- (b) The manufacturer's certification~~[manufacturer shall certify]~~ that the systems comply with:
 - 1. NFPA 1192 Standards on Recreational Vehicles; or
 - 2. ANSI A119.5 Park Trailers.

(c) A copy of the procedure that directs the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

- 1. Scope and purpose; ~~[f.]~~
- 2. Receiving and inspection procedure for basic materials; ~~[f.]~~
- 3. Material storage and stock rotation procedure; ~~[f.]~~
- 4. Types and frequency of product inspection; ~~[f.]~~
- 5. Sample of inspection control form used; ~~[f.]~~
- 6. Responsibility for quality control programs, indicating personnel, their assignments, experience, and qualifications; ~~[f.]~~
- 7. Test equipment; ~~[f.]~~
- 8. Control of drawings and material specifications; and ~~[f.]~~
- 9. Test procedures.

(4) Manufacturer and retailer. If the manufacturer is also a retailer, the manufacturer shall comply with retailer licensing

provisions pursuant to Section 1 of this administrative regulation.

(5) Trade show. A certificate of acceptability shall not be required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky licensed retailers.

(6) Incorrect or Incomplete applications.

(a) If the department receives an incorrect or incomplete application, the department shall issue a correction notice specifying the defect to the applicant within thirty (30) days of receiving the application. If no corrected application is filed within thirty (30) days, the department shall deem the application abandoned and the fee forfeited.

(b) A corrected application submitted after the thirty (30) day period shall be processed as a new application.

(7) Proprietary information.

(a) The manufacturer shall label as proprietary any information relating to building systems or in-plant quality control systems that the manufacturer considers proprietary.

(b) The department, the inspection and evaluation personnel, and local enforcement agencies shall maintain and treat the designated information as proprietary unless the department determines that disclosure is necessary to carry out the purposes of KRS 227.550 through KRS 227.665 and 815 KAR Chapter 25.

(8) Alternative standards. A manufacturer may submit an alternative standard for recreational vehicles established by another state, federal government, or other independent third party for review by the department. If the department finds that the alternative standard for recreational vehicles is applicable to the standard adopted by this administrative regulation, then a certificate of accessibility shall be issued for those recreational vehicles.

Section 4. License and Certificate Renewals.

(1) Expiration of a license and certificate. A license and a certificate of acceptability shall expire on:

(a) For individuals, the last day of the licensee's or certificate holder's birth month in the following year; or

(b) For business entities:

1. The last day of the licensee's or certificate holder's month of incorporation in the following year; or

2. The last day of the birth month of the principal officer of the firm.

(2) Renewal procedure. A retailer and a manufacturer holding a certificate of acceptability wishing to renew a license or certificate shall submit to the department:

(a) A completed Form HBC MH/RV-3 License and Certification Renewal Application;

(b) Proof of continuing general liability insurance coverage; and

(c) A check or money order for the annual license fee payable to the Kentucky State Treasurer, in the amount of:

1. \$200 for a licensed retailer; or

2. \$500 for a certificate of acceptability.

Section 5. Recreational Vehicles in Manufacturers' or Retailers' Possession.

(1) Used recreational vehicle inspection.

(a) Prior to the offering for sale of any used recreational vehicle, or a recreational vehicle taken in trade, the retailer shall first certify that the electric, heating, plumbing, and fire and life safety systems are in a safe working condition.

(b) The retailer shall make any necessary repairs prior to offering the recreational vehicle for sale.

(c) The retailer shall affix a B seal to the recreational vehicle once any repairs have been made.

(d) If a seal is on the recreational vehicle prior to the inspection, the existing seal shall be removed and a new B seal placed on the recreational vehicle.

(2) Salvage units.

(a) A B2 seal shall be required if the retailer submits to the department an affidavit that the unit is a salvage unit.

(b) A salvage unit shall not be sold until it has been authorized, in writing, by the department to be labeled "salvage only" and the label has been affixed to the unit by the retailer.

(3) Sales between retailers.

(a) A seal~~[No seal]~~ shall not be required if a~~one~~~~(1)~~ licensed retailer sells any unit to another licensed retailer.

(b) The retailer selling the unit shall submit prior notice of the sale to the department.

(4) All used recreational vehicles purchased outside the Commonwealth not bearing a Kentucky B seal shall be inspected as a used recreational vehicle by a certified retailer or the department.

(5)

(a) A recreational vehicle that is not in compliance with the requirements of this administrative regulation shall be:

1. Corrected prior to the retailer certifying the recreational vehicle or offering the recreational vehicle for sale; or

2. Classified as a salvage unit and issued a salvage label in accordance with this administrative regulation.

(b) All recreational vehicles requiring repairs or corrections prior to recreational vehicle certification shall be reported to the department specifying the repairs required to correct the deficiencies.

(6) A retailer shall submit a completed Form HBC RV-7 Recreational Vehicle Unit Certification Format to the department no later than the first week of each month.

(7) Fees for inspections. The fees for the inspection of recreational vehicles shall be:

(a) If performed by a certified retailer:

1. Twenty (20) dollars per hour;

2. Twenty-two (22) cents per mile, measured from the place of the certified retailer's place of business; and

3. Twenty-five (25) dollars for the seal.

(b) If performed by the department:

1. Thirty-five (35) dollars; and

2. Twenty-five (25) dollars for the seal.

Section 6. Serial Numbers, Model Numbers, and Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue or front cross member of the frame at the lower left hand side (while facing the unit) and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 7. Change of Information.

(1) Manufacturers or retailers shall notify the department in writing within thirty (30) days of a change in the~~any of the following~~:

(a) ~~The~~ Company or corporate name;

(b) ~~The~~ Address of the company;

(c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period; or

(d) ~~The~~ Principal officers of the company.

(2) Manufacturers shall notify the department in writing within thirty (30) days of a change in the~~any of the following~~:

(a) ~~The~~ Location of any manufacturing facility; or

(b) ~~The~~ Location of a new manufacturing facility.

(3) If the business location of a retailer is changed, the department shall reissue the license to reflect the change of location without charge if it is located within the same county. A change of location to another county, which is not adjacent to the initial county, shall require a new license.

Section 8. Temporary Licenses.

(1) An unlicensed retailer may offer for sale recreational vehicles within the Commonwealth of Kentucky if the retailer purchases a temporary license from the department.

(2) Temporary license requirements. An out-of-state applicant for a temporary license shall:

(a) Be a duly licensed retailer in a state other than Kentucky;

(b) Furnish to the department proof of liability insurance in the minimum amount of at least:

1. \$200,000 bodily injury or death for each person;

2. \$300,000 bodily injury or death for each accident; and

3. \$100,000 property damage;

(c) Provide documentation to the department of a physical inspection by an authorized representative of the department that

confirms that a B seal is attached to each new unit the retailer proposes to display, show, or offer for sale;

(d) Submit to the department Form HBC RV-6 Temporary RV Retailer's License;

(e) Provide the department with the name, location, and time of the proposed event;

(f) Pay by check or money order a temporary license fee of \$100 made payable to the Kentucky State Treasurer;

(g) Certify to the department that the event shall comply with the Kentucky Fire code, 815 KAR 10:060;

(h) Possess a valid Kentucky sales tax certificate; and

(i) ~~Be licensed in a state that has~~**The state in which the applicant is licensed shall have** reciprocal provisions for temporary licensing of Kentucky retailers.

(3) An application for a temporary license shall be submitted to the department at least thirty (30) days prior to an event at which the retailer intends to offer for sale or sell recreational vehicles.

(4) A retailer shall not be issued more than two (2) temporary licenses per calendar year.

(5) Used recreational vehicles. A temporary license retailer shall not display, show, or offer for sale within the Commonwealth any used recreational vehicles except for used recreational vehicles with a Kentucky seal.

(6) Duration of temporary license. A temporary license shall not exceed fifteen (15) days.

(7) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business. The license shall be valid only for the location stated on the application.

Section 9. Seals.

(1) Application for seals. ~~For B seals,~~ a licensed retailer shall submit to the department ~~the following for B seals~~:

(a) A completed Form HBC MH-12, Application for Purchasing B Seals; and

(b) A fee of twenty-five (25) dollars for each B Seal requested, payable by check or money order to the Kentucky State Treasurer.

(2) Alteration or conversion of a unit bearing a seal.

(a) Any alteration of the plumbing, heat-producing equipment, electrical equipment installations or fire and life safety in a recreational vehicle which bears a seal, shall void the approval and the seal shall be returned to the department.

(b) The following shall not constitute an alteration or conversion:

1. Repairs with approved component parts by the manufacturer;
2. Conversion of listed fuel-burning appliances in accordance with the terms of the manufacturer's listing;
3. Adjustment and maintenance of equipment;
4. Replacement of equipment in kind; or
5. Any change that shall not affect those areas regulated by the NFPA 1192.

(c) Any retailer proposing an alteration to a recreational vehicle bearing a seal shall apply to the department. The application shall include:

1. ~~The~~ make and model of the recreational vehicle;
2. ~~The~~ serial number;
3. ~~The~~ state seal number;

4. A complete description of the work to be performed together with plans and specifications if required; and

5. ~~The~~ location of the recreational vehicle where work is to be performed.

(d) Upon completion of the alteration, the applicant shall request the department to make an inspection.

(e) ~~Based on inspection of the alteration,~~ the applicant shall purchase a replacement seal ~~based on inspection of the alteration~~ for a fee of twenty-five (25) dollars.

(3) Placement of B seals.

(a) Each B seal shall be assigned and affixed to a specific recreational vehicle.

(b) Assigned B seals shall not be transferable except upon prior approval of the department.

(c) A B seal that is not affixed as assigned shall be void, and the B seal shall be returned to or confiscated by the department.

(d) A B seal shall remain the property of the department and shall be seized by the department if there is of a violation of KRS

227.550 to 227.665 or this administrative regulation.

(e) A B seal shall be securely affixed by the door on the handle side at approximately handle height.

(f) ~~Other seals, stamps, covers, or other markings~~**No other seal, stamp, cover, or other marking** shall ~~not~~ be placed within two (2) inches of the B seal.

(4) Lost or damaged seals.

(a) If a B seal becomes lost or damaged, the owner shall immediately notify the department in writing, specifying:

1. The manufacturer;
2. The recreational vehicle serial number; and
3. When possible, the B seal number.

(b) All damaged B seals shall be returned to the department.

(c) Damaged and lost B seals shall be replaced by the department after an inspection and payment of the appropriate fee under Section 3(10) **of this administrative regulation**.

(5) Denial and repossession of seals.

(a) If the department discovers that a retailer fails to repair a used recreational vehicle under the standards and procedures set forth in KRS 227.550 to 227.665 and this administrative regulation, or fails to comply with any provision for placement of B seals, the department shall provide notice to the retailer of the violations.

(b) The retailer shall fix the violations, and the retailer shall submit proof to the department that the violations were fixed.

(c) If the retailer continues to offer for sale recreational vehicles in violation of KRS 227.550 to 227.665 or this administrative regulation, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated. The department shall reimburse the retailer for the price of the confiscated unused seals.

(d) After the retailer submits proof that the violations have been fixed, the retailer shall resubmit an application for B seals.

(6) Red Tagging.

(a) If any recreational vehicle bearing a B seal is found to be in violation of KRS 227.550 to 227.665 or this administrative regulation, the department shall attach to the vehicle a red tag and furnish the retailer a copy of same.

(b) The department, a retailer, or a manufacturer shall not remove the red tag until the necessary corrections have been made and approved by an inspection conducted by the department or a certified retailer.

Section 10. Incorporation by reference.

(1) The following material is incorporated by reference:

(a) "Form HBC MH/RV-1, Application of Certificate of Acceptability", April 2023~~[May 2020]~~;

(b) "Form HBC MH/RV-2, Request for Approval to Inspect", May 2020;

(c) "Form HBC MH/RV-3, License and Certification Renewal Application", April 2023~~[May 2020]~~;

(d) "Form RV-2, Recreational Vehicle Retailer Application", April 2023~~[May 2020]~~;

(e) "Form HBC RV-6, Temporary RV Retailer's License", May 2020;

(f) "Form HBC MH-12, Application for Purchasing Seals", May 2020;

(g) "Form HBC RV-7, Recreational Vehicle Unit Certification Format", November 2018;

(h) "NFPA 1192, Standard on Recreational Vehicles", 2018; and

(i) "ANSI A119.5, Park Trailers", 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Branch~~[Section]~~, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, August 8, 2023)

815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes.

RELATES TO: KRS 227.550, ~~227.560~~, 227.570, 227.580, 227.590, 227.600, 227.610, 227.620, 227.630, 227.990

STATUTORY AUTHORITY: KRS 227.570(1)(a), (2), (3), ~~[(4)]~~, 227.580, 227.590, **227.620(4)(a)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590(1) requires the department of Housing, Buildings and Construction to promulgate administrative regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660 governing the standards for the manufacture and sale of manufactured homes and mobile homes. KRS 227.580 makes it unlawful for a manufacturer to manufacture, import, or sell manufactured homes in Kentucky without a certificate of acceptability. KRS 227.570(3)~~227.570(4)~~ requires the department to promulgate administrative regulations to establish standards for the certified installer seal program. KRS 227.570(1)(a) requires the department to promulgate administrative regulations establishing a process for licensing retailers and issuing certificates of acceptability. KRS 227.620(4)(a) requires the department to establish fees for a retailer's license, manufacturer's certificate of acceptability, [] and [] Class B, [] Class B1, [] and [] Class B2 [] seals, in accordance with KRS 227.620(4)(a) 1. to 4. This administrative regulation establishes the standards for licensing persons and companies engaged in the sale of manufactured homes and mobile homes, establishes the standards for certificate~~certification~~ of acceptability for manufacturers of manufactured homes, and establishes the requirements for certified installer seals and certification of manufactured home installers.

Section 1. Licensed Retailer.

(1) License application.

(a) Except as provided in subsection (2) of this section, a person shall not engage in the business of selling manufactured homes or mobile homes within this state without holding a valid license issued by the department for each location.

(b) Before engaging in business, an applicant shall submit to the department:

1. The completed Form HBC MH-2;
2. A copy of a valid Kentucky sales tax certificate;
3. A check or money order for the annual license fee, in the amount of \$250 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and
4. Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:
 - a. \$200,000 bodily injury or death for each person;
 - b. \$300,000 bodily injury or death for each accident; ~~and~~ **and**
 - c. \$100,000 for damage to property.

(c) An applicant whose place of business is in another state and who possesses a valid retailer license in another state shall:

1. Comply with this section;
2. Not be required to maintain an established place of business within Kentucky, if the applicant is not offering a home for sale within Kentucky; and
3. Provide a Kentucky B seal for a used manufactured home or mobile home unit sold for delivery into Kentucky.

(2) Exemptions from Licensure as [a]Retailer.

(a) A manufactured home shall be exempt from seal requirements and a retailer shall be~~is~~ exempt from licensing if the unit:

1. Is brought into Kentucky for exhibition purposes only;
2. Is not sold in Kentucky; and
3. Inspection does not reveal a condition hazardous to health or safety.

(b) Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes

from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if:

1. The developer receives prior written approval from the department;

2. The home was installed by a certified~~certificated~~~~certified~~ installer;

3. The developer owns the homes and the lots upon which the homes are installed;

4. The manufacturer's warranty period begins upon possession and shall be transferred from the developer to the consumer-occupant;

5. The manufacturer's warranty support shall be performed in accordance with generally accepted~~accepted~~ standards for retail transactions;

6. The developer's documentation contains the name and location of the:

- a. Developer;
- b. Development; and
- c. Retailer; and

7. The retailer and installer provide~~provides~~ the required services as warranted and as required by laws governing retailer and installer license or certification.

(3) Retailer's satellite location.

(a) An additional license shall not be required ~~for~~~~of~~ a fully ~~[-]~~ licensed retailer for the display or sale of a manufactured home located on an individual lot, in a subdivision, land-lease community, or manufactured home or mobile home park.

(b) A suitable sign identifying the name and business location of the retailer licensee shall be posted at the location.

(4) Qualified personnel required.

(a) Education requirements. A new retailer license or a renewal of an existing retailer license shall not be issued unless the retailer employs at least one (1) person in a management position who has successfully completed the educational training and departmental testing program administered as part of the Certified Installer Program under Section **3[4]** of this administrative regulation. The proof of experience in Section **3(1)(a)7.4(1)(a)4.** shall not be required.

(b) Certification. The department shall classify a person qualifying under subsection (1) of this section as a certified manager.

(c) Exception. A certified manager shall not be required at each licensed location for a retailer with more than one (1) in-state location if:

1. The retailer has only one (1) set-up, installation, and delivery system located in Kentucky;
2. A certified manager supervises the work of the system; and
3. The arrangement is approved, in writing, by the department.

(5) Notification by Licensees.

(a) A retailer shall notify the department, in writing, within thirty (30) days of a change in any of the following:

1. Dealership name;
2. Address of business;
3. Retailer ownership interest of twenty-five (25) percent or more within a twelve (12) month period; or
4. ~~[A.]~~Principal officer or chief managing officer of the firm.

(b) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the license.

(c) A new license shall be required if an established business changes location to a different county.

(6) Maintenance of Records. A retailer shall:

(a) Complete and maintain Form HBC MH-7 for each new or used manufactured home or mobile home sold;

(b) Retain the completed Form HBC MH-7, for three (3) years; and

(c) Keep the form available for~~to~~ a field inspector upon request.

Section 2. Manufacturer's Certificate of Acceptability.

(1) Requirements for issuance. An applicant for a manufacturer's certificate of acceptability shall submit to the department:

- (a) A completed Form HBC MH/RV-1;
- (b) Proof of insurance for general liability coverage that complies

with KRS 227.610 in the amount of at least:

1. \$300,000 bodily injury or death for each person;
2. \$400,000 bodily or injury or death for each accident; and
3. \$100,000 for damage to property; and

(c) A certificate of acceptability fee in the amount of \$500 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by a check or money order made payable to the Kentucky State Treasurer.

(2) A manufacturer who is also a retailer shall comply with retailer licensing provisions in Section 1 of this administrative regulation.

(3) A manufacturer shall notify the department in writing, within thirty (30) days of a change in ~~any of the following~~:

- (a) ~~Business~~ Corporate name;
- (b) Company address;
- (c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period;
- (d) Location of the ~~a~~ manufacturing facility;
- (e) The number of facilities by virtue of the establishment of a new manufacturing facility; or
- (f) ~~Principal~~ officer of the firm.

(4) A change in ownership ~~interest~~ interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the certificate of acceptability.

(5)

(a) A manufacturer who considers information relating to a building or in-plant quality control system to be proprietary shall designate the information as proprietary at the time of plan submission.

(b) The designated information shall be maintained and treated as proprietary by:

1. The department;
2. Inspection and evaluation personnel; and
3. Local enforcement agencies.

Section 3. Certified Installers.

(1) Initial application.

(a) An applicant for installer certification ~~certified installer~~ shall submit to the department:

1. A completed Form HBC MH-3, Certified Installer Application;
2. An application fee of \$100;
3. Proof of successful completion of a fifteen (15) hour approved course of education;
4. A passing score on the certified installer examination administered by the department;
5. A certificate verifying current worker's compensation insurance coverage or a notarized waiver of exemption; ~~and~~
6. Proof of general liability insurance coverage in an amount not less than \$250,000; and
7. Proof of experience in the form of:

a. A completed Form HBC MH-3A documenting the applicant's experience assisting in site preparation and installation of manufactured homes under the supervision of a certified installer for at least sixty (60) days and on at least five (5) homes; or

[4. Proof of regularly assisting in site preparation and installation functions:

- a. Under the supervision of a certified installer;
- b. For at least sixty (60) days; and
- c. On at least five (5) homes;]

b. An affidavit documenting the applicant's experience assisting in site preparation and installation of manufactured homes under the supervision of a certified installer for at least one (1) year, as attested to by three (3) individuals who are licensed retailers, manufacturers, manufactured home community managers, manufactured home design professionals, or certified installers.

[5. A passing score on the certified installer examination given by the department; and

6. A certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.]

(b) An applicant who possesses an active installation license issued by the United States Department of Housing and Urban

Development pursuant to 24 C.F.R. § 3286.201 through 24 C.F.R. § 3286.211 shall be exempt from the requirements of subparagraphs 4. and 7. of paragraph (a) of this subsection.

(c) An applicant who possesses an active installation license or certification in good standing from a jurisdiction with which the department has reciprocity shall be exempt from the requirements of subparagraphs 4. and 7. of paragraph (a) of this subsection.

(d) ~~[(b)]~~ If an initial certificate is for a period of less than twelve (12) months, the fee shall be prorated pursuant to the schedule provided in Form HBC MH-3 ~~reduced on a pro-rata monthly basis~~.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3)

(a) If the certified installer changes his or her business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the department and request an amended certificate reflecting the individual's status.

(b) If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or as having in its employ a certified installer until another certified person has become associated with that company.

(4) Certified Installer Seal. A certified installer who installs a manufactured home or mobile home in accordance with KRS 227.570(3) and this administrative regulation shall place a certified installer seal on the home.

(a) Certified installer seals shall be obtained from the department.

(b) The application shall be:

1. Filed on Form HBC MH-12, Application for Purchasing Seals; and
2. Accompanied by a fee of twenty-five (25) dollars for each seal.

(5) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two (2) parts that shall be affixed as follows:

1. One (1) part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if a HUD label is not required; and

2. One (1) part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(6) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;
2. The manufactured or mobile home serial number; and
3. The certified installer seal number, if known.

(b) A damaged seal shall be:

1. Promptly returned to the department; and
2. Replaced by the department for a fee of twenty-five (25) dollars.

(7) Recordkeeping. A certified installer shall:

(a) Complete and maintain Form HBC MH 40-30, Monthly Certified Installer Certification, for each certified installation;

(b) Retain the completed Form HBC MH 40-30, Monthly Certified Installer Certification, for three (3) years; ~~and~~

(c) Make a copy of the form available to a state inspector upon request; ~~and~~.]

(d) ~~[A certified installer shall]~~ Send the department a monthly report of the information found in HBC MH 40-30 by mail, electronic mail, or facsimile.

[Section 4. Incorrect or Incomplete Applications. If there is an incorrect or incomplete application, the department shall:

(1) Issue a correction notice to an applicant within thirty (30) days of receiving a defective or incomplete application specifying the defect;

(2) Deem the application abandoned and the fee forfeited for an applicant who fails to submit a corrected application in accordance with the information supplied on the application correction notice,

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within thirty (30) days of receipt; and

(3) ~~Process as a new application, a corrected application submitted after the thirty (30) day period.~~

Section 4.~~[Section 5.]~~ Renewals.

(1) Expiration of licenses~~[a license]~~ and certificates. A license, a certificate of acceptability, and an installer certification, unless renewed, revoked, or suspended, shall expire on:

(a) For individuals, the last day of the licensee's birth month in the following year; or

(b) For business organizations~~[corporations]~~:

1. The last day of the licensee's month of incorporation in the following year; or

2. The last day of the licensee's birth month in the following year.

(2) Renewal of licenses and~~[a license or]~~ certificates.

(a) A retailer, manufacturer, or ~~[a]~~certified installer, wishing to renew a license or certification, shall submit ~~[the following]~~:

1. A completed License and Certification Renewal, Form HBC MH/RV-3;

2. Proof of continuing general liability insurance coverage; and

3. A check or money order for the renewal~~[annual license]~~ fee, in the amount of:

a. \$250 for a licensed retailer;

b. \$500 for a certificate of acceptability; or

c. Fifty (50) dollars for an installer certification.

(b) A retailer, manufacturer, or certified installer shall renew a license or certificate before the license or certificate expires pursuant~~[according]~~ to subsection (1) of this section.

(c) A certified installer shall submit proof of completion of the continuing education requirements established in 815 KAR 1:030.

(d) A retailer and ~~[a]~~manufacturer shall maintain at least minimum general liability insurance and shall notify the department if there is a change in insurance coverage.

(3) A certified installer may place his or her certification in inactive status.

(a) To place an installer certification in inactive status, a certified installer shall pay an ~~initial~~ inactive fee of fifty (50) dollars.

(b) An inactive certified installer shall return any unused certified installer seals to the department within thirty (30) days of his or her certification becoming inactive.

(c) An inactive certified installer shall not install manufactured or mobile homes, represent him or herself as a certified installer, or otherwise engage in the work of a certified installer.

(d) To reactivate an inactive installer certification, the certificate holder shall complete all renewal requirements of subsection (2) of this section and pay a fifty (50) dollar renewal fee.

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

(1) The following material is incorporated by reference:

(a) Form HBC MH/RV-1, "Application of Certificate of Acceptability~~[for Manufactured Homes]~~", April 2023~~[May 2020]~~;

(b) Form HBC MH-2, "Application for Manufactured Home Retailer's License", April 2023~~[May 2020]~~;

(c) Form HBC MH-3, "Certified Installer Application", April 2023~~[May 2020]~~;

(d) Form HBC MH-3A, "Installer Training Verification Form", April 2023;

~~(e)~~~~(f)~~ Form HBC MH/RV-3, "License and Certification Renewal", April 2023~~[May 2020]~~;

~~(f)~~~~(e)~~ Form HBC MH-12, "Application for Purchasing Seals", May 2020;

~~(g)~~~~(f)~~ Form HBC MH-7, "Monthly Manufactured Home Retailer Certification Form~~[Format]~~", May 2020; and

~~(h)~~~~(g)~~ Form HBC MH 40-30, "Monthly Certified Installer Certification", May 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Branch~~[Section]~~, 500 Mero Street, First Floor~~[101 Sea Hero Road, Suite 100]~~, Frankfort, Kentucky 40601~~[40601-5412]~~, Monday through Friday, 8 a.m. through~~[and]~~ 4:30 p.m. and is available online at <https://dhbc.ky.gov>~~[http://dhbc.ky.gov]~~.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Electrical (As Amended at ARRS, August 8, 2023)

815 KAR 35:060. Licensing of electrical contractors, master electricians, and electricians.

RELATES TO: KRS ~~[164.772(3)]~~, 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians.

Section 1. Initial Application Requirements.

(1) Filing the application.

(a) Electrical contractor. An applicant seeking an electrical contractor's license shall submit to the department:

1. A completed Electrical Contractor's License Application, Form EL-2;

2. An application fee of \$200 for a twelve (12) month license;

3. The name and license number of the master electrician affiliated with the applicant; and

4. Proof of insurance as required by KRS 227A.060(1)(c).

(b) Master Electrician. An applicant seeking a master electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;

2. An application fee of \$100 for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 227A.060(2)(b) and this administrative regulation.

(c) Electrician. An applicant seeking an electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;

2. An application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 227A.060(3)(b) and this administrative regulation.

(d) The application fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(2) Photograph requirement. All electrical license applicants shall submit a passport-sized color photograph of the applicant taken within the past six (6) months.

(3) Voiding of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of the one (1) year, the application shall be void.

Section 2. Reciprocity. An applicant for reciprocity shall:

(1) Comply with:

(a) The requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(b) The general application requirements in Section 1(2) of this

administrative regulation;

(2) Provide:

(a) A copy of the applicant's license from the participating state;
(b) A letter of good standing from the licensing authority of the state in which the applicant is currently licensed; and

(3) If applying for an electrical contractor's license, proof of insurance as required by KRS 227A.060(1)(c).

Section 3. Verification of Experience.

(1) Records of experience. Proof of experience shall be provided by:

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form 1040, Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or municipal government that did not issue electrical ~~contractor's~~[contractors], master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has engaged in electrical work under the scope of the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125, from~~worked as a master electrician or an electrician for~~ at least one (1) of the following:

1. An electrical workers union;

2. A licensed electrical contractor and licensed master electrician the applicant was or currently is employed by~~A certified electrical inspector~~;

3. An industrial manufacturing facility or natural gas pipeline facility the applicant was or currently is employed by~~An employer that employed the applicant as an electrician or a master electrician~~; or

4. An electrical training program that has been approved by the department pursuant to 815 KAR 35:090 and is an apprenticeship program registered in accordance with 787 KAR 3:010.

(d) Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

(2) An applicant for a master electrician license or electrician license attending an accepted electrical training program in accordance with 815 KAR 35:090 shall provide ~~[the following]~~ with his or her application:

(a) Affidavit from the director or authorized agent of the electrical training program confirming the applicant's participation in the electrical training program; and

(b) Documentation that the applicant has completed the required number of hours in accordance with 815 KAR 35:090.

(3) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent.

(4) One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work under the scope of the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125, in a ~~continuous~~contiguous twelve (12) month period.

Section 4. Examinations.

(1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass, with a minimum score of seventy (70) percent, an examination administered by an approved examination provider.

(2) A passing score shall be valid for a period of three (3) years.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

- (a) An owner of the applicant's business;
- (b) An officer of the applicant's business;
- (c) A director of the applicant's business; or

(d) A full-time employee of the applicant's business.

(5) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 5. Appeal Procedure.

(1) An applicant denied a license may appeal the decision to the commissioner of the department. The applicant shall submit written notice of the appeal to the department within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the commissioner of the department.

Section 6. Proof of Insurance.

(1) An electrical contractor's insurance policy shall name the department as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an insurance provider approved by the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Each electrical contractor shall require the contractor's liability and workers' compensation insurers to provide notice to the department if a policy:

(a) Is cancelled, terminated, or not renewed; or

(b) Limit is lowered.

(4) An electrical contractor shall advise the department of ~~[a]~~:

(a) A change in the contractor's insurance coverage, including cancellation or termination of any policy;

(b) A change in the insurer providing the coverage; or

(c) Changed circumstances that require the contractor to obtain coverage.

Section 7. Inactive License Status.

(1) A licensee may request that a license be placed in inactive status.

(2) An electrical contractor whose license is~~is~~ in inactive status shall not be required to maintain liability insurance or provide proof to the department of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) A licensee shall not perform electrical work while the license is inactive. Performing ~~electrical~~work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 8. Renewal Requirements.

(1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal shall occur on or before the last day of the month ~~[shall be the month]~~ the license was issued.

(2) Filing for renewal. An electrical contractor, a master electrician, or an electrician shall submit to the department:

(a) A completed form DHBC L-1, Licensing Renewal Application; ~~L-1~~:

1. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

2. Electrical License Application, Form EL-3 for a master electrician and electrician;

(b) A renewal fee of:

1. \$200 for an electrical contractor;
2. \$100 for a master electrician; and
3. Fifty (50) dollars for an electrician;
- (c) Proof of annual continuing education [attendance—in accordance with 815 KAR 2:010; and
- (d) Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(3)

(a) A ~~[license]~~licensee who[that] is in inactive status shall be exempt from annual renewal.

(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

[4]

(a) A licensee who applies for reissuance of a license pursuant to 2018 Ky. Acts ch. 186, sec. 2 shall submit to the department:

1. A completed:

a. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

b. Electrical License Application, Form EL-3 for a master electrician and electrician;

2. Proof of licensure as described in 2018 Ky Acts ch. 186, sec.

2;

3. A reissuance fee of \$100; and

4. Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(b) The reissued license shall be valid for one (1) year from the date of issuance. The reissued license holder shall obtain a full license if the reissued license holder passes the corresponding license examination pursuant to Section 4 of this administrative regulation.

(c) If the individual with the reissued license fails to take and pass an examination within one (1) year of reissuance, the department shall terminate the license.

(5) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.]

Section 9. Reinstatement and Late Fees.

(1) Application, renewal, reinstatement, and late fees shall not be refundable.

(2) The reinstatement fee for a terminated license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(3) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely, and a late fee shall not be assessed.

Section 10. Change of Information.

(1) An electrical contractor and a master electrician shall notify the department of any change to the name of the electrical contractor's or master ~~electrician's~~[electrician-s] business and its address, employer, and the employer's address each time a change of ~~information~~[employment] is made.

(2)

(a) Except as stated in subsection (3) of this section, if an electrical contractor designated by an entity as established in Section 4(4) of this administrative regulation leaves the employment or no longer maintains ~~an~~[and]an interest in that entity, the entity shall designate another person who either:

1. Has passed the electrical contractor's examination; or

2. Successfully passes the electrical contractor's examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(3) Death of an electrical contractor or master electrician.

(a) If the electrical contractor or master electrician representing a company dies, the company shall notify the department within ten (10) days of the electrical contractor's or master electrician's death.

(b) The 180[-]day interim period established in KRS 227.480 and KRS 227A.140 shall begin on the date the electrical contractor or master electrician dies.

(c) The company shall not be required to renew the deceased's electrical contractor or master electrician license[-] if the license renewal date falls within the 180[-]day interim period.

(d) The company shall not use the deceased electrical contractor's or master electrician's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement electrical contractor or master electrician to represent the company on or before the expiration date of the interim period.

Section 11. Provisional License.

(1) Application. An applicant seeking a provisional electrician license shall submit to the department:

(a) A completed ~~Provisional~~[Provision]Electrical License Application Form, EL-14;

(b) An application fee of fifty (50) dollars;

(c) A passport-sized color photograph of the applicant taken within the past six (6) months; and

(d) Proof of the applicant's experience as established by KRS 227A.060(4)(a)2.

(e) The proof requested in paragraph (d) of this subsection shall be satisfied with the documents listed in Section 3(1) of this administrative regulation.

(2) Responsibilities. A provisional electrician license holder shall have the same rights and responsibilities as an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation.

(3) Termination.

(a) A provisional electrician license shall be valid for one (1) year from the date of issuance. The provisional electrician license shall immediately terminate on the date of the one (1) year anniversary of the issuance of the provisional electrician license.

(b) The provisional electrician license holder shall no longer have the rights and responsibilities of an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation. The provisional electrician license holder shall revert to the individual's unlicensed status [as]before the issuance of the provisional license.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Electrical Contractor's License Application", Form EL-2, May 2020;

(b) "Electrical License Application", Form EL-3, May 2020; [and]

(c) "Provisional ~~Electrical~~[Electrician] License Application", Form EL-14, May 2020[-]; and

(d) "Licensing Renewal Application", Form DHBC L-1, April 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

CONTACT PERSON: Molly B. Cassady, General Counsel, Department of Housing, Buildings and Construction, Mero St., Kentucky 40601, phone 502-782-5448, fax 502-573-1057; email molly.cassady@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Inspector General
Division of Health Care
(As Amended at Interim Joint Committee on Families and
Children on July 25, 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)(14) "Health facility" is defined by KRS 216B.015(13) to include assisted living communities.

(15) "Immediate family member" means a:

(a) Spouse;

(b) Child;

(c) Stepchild;

(d) Son-in-law;

(e) Daughter-in-law; or

(f) Grandchild.

(16)(15) "Instrumental activities of daily living" is defined by KRS 194A.700(15).

(17)(16) "Legal representative" means a person legally responsible for representing or standing in the place of the resident 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)(24) "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) "PRN" means as needed.

(29) "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.

(30)(29)(24) "Resident" is defined by KRS 194A.700(22).

(31)(30)(29)(25) "Secured dementia care unit" is defined by KRS 194A.700(23).

(32)(31)(30)(26) "Service plan" is defined by KRS 194A.700(24).

(33)(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.

(34)(33)(32)(28) "Temporary condition" is defined by KRS 194A.700(26).

(35)(34)(33)(29) "Unlicensed personnel" is defined by KRS 194A.700(27).

(36)(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) **1. through 3.** 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:

a. The buildings are operated by the same licensee; **and**

b. The residents in each building are served under the same licensure category.

2. A license for two (2) or more buildings on a campus shall identify the:

a. Address;

b. Licensed resident capacity of each building; **and**

c. **Licensure category.**

3. If an assisted living community operates a secured dementia unit in addition to another assisted living licensure level on the same campus, the cabinet shall issue a separate license for the:

a. ALC-DC; and

b. ALC or ALC-BH depending on the level of services provided.

4. An assisted living community that provides services on the same campus to residents in need of social model services only and residents in need of basic health and health-related services outside of a secured dementia unit shall apply for licensure as an ALC-BH. [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.

4.a. If a nurse or staff person who completes the functional needs assessment determines that a resident is able to safely self-administer medications without assistance and the resident keeps the medication locked in his or her living unit, the nurse or staff person shall counsel the resident at least one (1) time each month to ascertain if the:

(i) Resident continues to be capable of self-administering medication; and

(ii) Security of the medication continues to be maintained.

b. The facility shall keep a written record of the monthly counseling.

c. For a resident who keeps his or her medication locked in a central medication storage area:

(i) The resident may be permitted entrance or access to the area for the purpose of self-administration; and

(ii) A facility staff member must remain in or at the storage area the entire time the resident is present.

(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][1-] Information about the facility's grievance procedures;**[and]**

[b][2-] The name, telephone number, and e-mail contact information for the individuals who are responsible for handling resident grievances;**[-]**

(c)[(b) The notice shall also have:

1-] Contact information for the state long-term care ombudsman; and

[d][2-] Information for reporting suspected abuse, neglect, or exploitation of an adult.

Section 8. Business Operations. (1) Display of license. The original current license shall be displayed at the main entrance of each ALC, ALC-BH, and ALC-DC.

(2) Quality management 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)(e)] 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 (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:

- Theft;
- Abuse or sale of illegal drugs;
- Abuse, neglect, or exploitation of an adult; or
- 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:

- Caregiver misconduct registry;
- Nurse aide abuse registry; and
- 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), (i), or (n)** shall be supervised periodically to:

1. Verify that the work is being performed competently; and
2. Identify problems and solutions to address issues relating to the staff's ability to provide the services.

(b) The supervision of unlicensed personnel shall be done by staff who:

1. Have the authority, skills, and ability to provide the supervision of unlicensed personnel;
2. Can implement changes as needed; and
3. Can train staff.

(c) Supervision **may include[includes]:**

1. Direct observation of an unlicensed staff person while the unlicensed staff person is providing the services; and

2. Indirect methods of gaining input, such as gathering feedback from the resident.

(d) Supervisory review of unlicensed staff shall be provided at a frequency based on the unlicensed staff person's knowledge, skills, and performance.

(7) Supervision of staff providing delegated nursing or therapy tasks.

(a) An unlicensed staff person who performs:

1. Delegated nursing tasks shall be supervised by a nurse pursuant to the requirements of 201 KAR 20:400, Section 4; or

2. Therapy tasks shall be supervised by [a registered nurse or] an appropriate licensed health professional according to the facility's policy to:

a.[1-] Verify that the work is being performed competently; and
b.[2-] Identify problems and solutions related to the staff person's ability to perform the tasks.

(b) Supervision of an unlicensed staff person performing medication or treatment administration**[shall]:**

1. **Shall** be provided by a **[registered-]nurse or appropriately licensed health professional; and**

2. **May** include observation of the staff person administering the medication or treatment and the interaction with the resident.

(c) The direct supervision of an unlicensed staff person performing a delegated task shall be provided the first time the staff person performs the delegated task and on an as needed basis thereafter based on performance.

(8) Orientation and annual training.

(a) Prior to working independently with residents and within thirty (30) days from the date of hire, all staff and management shall receive orientation education that addresses the topics required by KRS 194A.719(1)**(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) and subsection (21)(c) and (d) 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.

(c) 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.

(d) 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;

a. Administered the medication; or

b. Delegated a PRN medication in accordance with subsection (21)(d) of this section.

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; ~~and~~

3. If a PRN medication is delegated, name of the certified medication aide who administered a PRN medication.

(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. a For planned time away non-controlled substance, ~~the~~ medications shall be obtained from the pharmacy or set up by the ~~registered~~ nurse or authorized health ~~professional~~~~care practitioner~~; ~~and/or~~

b ~~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 non-controlled substance medications in the amounts and dosages needed for the length of the anticipated absence, not to exceed seven (7) calendar days.

2. For planned or unplanned time away, controlled substance medications shall be obtained from the pharmacy or other authorized dispensing practitioner and kept in the original container bearing the original prescription label.

(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 A non-controlled 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.

b A controlled substance shall:

1. Not be set up for later administration; and

2. Be kept in the original container in which it was dispensed by the pharmacy or other authorized dispensing practitioner bearing the original prescription label.

(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 A nurse may delegate administration of a regularly scheduled controlled substance to a certified medication aide (CMA) if the medication has been prescribed and labeled in a container for a specific resident.

d For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(e) 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 **or CMA** 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.

(f)(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.

(g)(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.

(h)(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.

(i)(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", ~~July/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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at ARRS, August 8, 2023)

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(8)(5).

(6) "Health care services agency" is defined by KRS 216.718(5)(6).

(7) "Hospital" is defined by KRS 216.718(6)(7).

(8) "Long-term care facilities" is defined by KRS 216.718(7)(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(f)), 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/lcapplications.aspx>.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, August 8, 2023)

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, 435.906, 435.914, 435.916, 435.906, ~~435.926~~, 42 U.S.C. 416, 423, 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>.]~~

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 8, 2023)**

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 under 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.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(As Amended at ARRS, August 8, 2023)

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 under 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 under 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 under 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 under 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 under 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 [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;
 - (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, **275 E. Main St., 4W-E[12 Mill Creek]**, Frankfort, Kentucky **40602[40604]**; 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 under 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 under 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 under 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 under twenty-six

(26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 8, 2023)

907 KAR 20:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(e)(14), (l)(1), 1396b(x), 9902(2), 42 C.F.R. 435.403, 435.406, 435.603, 435.926, 440.255

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)(l)(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 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.

(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 **subsection[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;

(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 11.] 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.

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, August 8, 2023)**

922 KAR 2:180. Requirements for registered relative child care providers in the Child Care Assistance Program.

RELATES TO: KRS [47.165, 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, 9857-9858q]

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) [(44)] "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 that has been approved by the cabinet as providing research-based and scientific best practices; 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.

[(1)] 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 199.8982(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[13]; 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[13].

(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 those 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;

(ff) 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/dcbss/Pages/default.aspx>.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amended After Comments)

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 wish to be temporarily or permanently excluded from gambling in the Commonwealth for any reason, such as self-identification as problem or compulsive gamblers~~[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 an as-needed basis, but at least weekly~~[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 (2) 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: August 3, 2023

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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: The KHRC made two changes to this regulation due to public comments. First, the KHRC amends the regulation to allow the self-exclusion list to be used by any patron, including, but not limited to, patrons who self-identify as being problem or compulsive gamblers. Second, the KHRC amends the regulation to state that associations shall provide self-exclusion information on an as-needed basis, but at least weekly.

(b) The necessity of the amendment to this administrative regulation: The first proposed amendment, which allows the list to be used by any patron, may make the self-exclusion list more

attractive to patrons because they will not have to identify as problem or compulsive gamblers to take advantage of self-excluding. The second proposed amendment will allow associations to update the self-exclusion list more often than weekly if they choose to do so.

(c) How the amendment 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. The proposed amendments fulfill that statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments will assist in the effective administration of the mandates in KRS 230.260(15).

(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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative 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 place themselves on the list (regardless of whether the patron self-identifies as a problem or compulsive gambler). The associations will also be required to collect self-exclusion information and provide that self-exclusion information to the Kentucky Horse Racing Commission as needed, but at least on a weekly basis.

(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 Medicaid Services Division of Health Care Policy (Amended After Comments)

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

RELATES TO: KRS 205.520, 205.622, 205.8451(7), (9), Chapter 320, Chapter 326, 326.030, 326.040, 369.101 to 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 440.40, 440.60, 447 Subpart B, [42 U.S.C. 1396a-d], 45 C.F.R. 147.126, Parts 160 and 164, 164.306, 164.316, 42 U.S.C. 1320d to 1320d-8, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

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

Section 1. Definitions.

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

(2) "Department" means the Department for Medicaid Services 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 ~~[Department for Medicaid Services Vision Program Fee Schedule]~~ as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(2) Vision service limits shall be as established on the Kentucky Medicaid Vision Fee Schedule ~~[Department for Medicaid Services Vision Program Fee Schedule]~~ as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(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 manufacturer 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 disposable[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>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: August 7, 2023 at 2:50 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program coverage policies and requirements regarding vision services.

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program coverage provisions and requirements regarding vision services; by complying with a federal mandate; and by protecting Kentucky taxpayer monies from being spent if federal matching funds are not provided.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation by implementing a state plan amendment that allows for adults to receive vision services. The amendment also clarifies cost sharing requirements, how providers can deliver services on a non-Medicaid basis, requires a higher quality of frame, lens, and lens enhancements to be available to Medicaid recipients. In addition, clarification is made that contact lenses are covered and that daily contact lenses will be available to Medicaid recipients. Finally, updated references to the department's vision fee schedule are included. The Amended After Comments version of the administrative regulation changes the term "daily contact lenses" to "disposable contact lenses" to allow providers additional flexibility in

treating patients. In addition, the word "manufacturer" is now included in order to clarify the expected level of quality for eyeglass frames.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to reflect current vision policy, and to implement the approval of recent state plan amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment and updating the administrative regulation to conform to recent statutory and regulatory updates to the Medicaid program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by providing a periodic update of the vision program, and to implement recently effective state plan amendments, administrative regulations, and statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all adult and children recipients in the Medicaid program by enhancing the quality of vision products that can be offered to recipients. There are currently 1.7 million individuals in the Medicaid program. The adult population that is newly eligible could include as many as 900,000 individuals from the traditional and expansion Medicaid populations. In addition, this administrative regulation will affect vision service providers participating in the Kentucky Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required of the regulated entities other than to properly bill for services and adhere to program integrity requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individual beneficiaries will benefit from access to vision services, such as eyeglasses and contact lenses. Vision services providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. This upfront expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment. The department – due to the efficiencies created – will meet its budgetary requirements as established in House Bill 1 of the 2022 Regular Session.

(b) On a continuing basis: DMS anticipates that movement out of the Medicaid program will intensify in future years. DMS further anticipates that the preventive care will reduce later utilization. The department will revisit the PMPM for this service category with contracted actuaries prior to making future budget requests.

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

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

regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary to implement this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(33), 42 C.F.R. 441.56(c)(1), 42 C.F.R. 441.30, Section 2711 of the Affordable Care Act, and 45 C.F.R. 147.126.

(2) State compliance standards. Vision services for Medicaid recipients are not mandated by Kentucky law; however, the Department for Medicaid Services is required by KRS 205.8453 to "institute other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Coverage of vision services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one (21). 42 C.F.R. 441.30 states, "The plan must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician, if—

(a) The plan does not provide for payment for services provided by an optometrist, except for eligibility determinations under §§435.531 and 436.531 of this subchapter, but did provide for those services at an earlier period; and

(b) The plan specifically provides that physicians' services include services an optometrist is legally authorized to perform."

Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care.

42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ..."

45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that

requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1), and 45 C.F.R. 147.126.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. This up-front expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment. The department – due to the efficiencies created – will meet its budgetary requirements as established in House Bill 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that movement out of the Medicaid program will intensify in future years. DMS further anticipates that the preventive care will reduce later utilization. The department will revisit the PMPM for this service category with contracted actuaries prior to making future budget requests.

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 anticipates cost savings for vision services providers who will be able to receive Medicaid reimbursement for a previously uncovered population of 900,000 people. The vision services providers would have previously sought private pay reimbursement for these services and many recipients may have not accessed services as a result. In addition, other services – such as higher quality eyeglasses and daily contacts – are now available to the entirety of the Medicaid population. This will provide a stable source of funding for these services.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates cost savings on an ongoing basis for vision services providers because expanded services, and higher quality products will now be from a more stable funding source.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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 5:060. Literacy program requirements for middle school, high school, grades 5-12, and grades P-12 certification programs.

RELATES TO: KRS 161.028, 161.030[, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1022h]

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[board]. This administrative regulation establishes the literacy preparation requirements for middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs.

Section 1. (1) Each middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation program shall require candidates admitted to the program [on or after August 1, 2016,] to demonstrate the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher as published in the Standards for Reading Professionals—Revised 2010.]

(2) A middle school, high school, Grades 5-12, or Grades P-12 certification educator preparation program shall require a candidate admitted to the program [on or after August 1, 2016,] to complete one (1) of the following:

(a) A three (3) hour content literacy course aligned to the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher] and taught by faculty qualified to deliver literacy instruction; or

(b) Two (2) or more courses aligned to the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher] and taught by faculty qualified to deliver literacy instruction.

(3) In addition to the program approval requirements established in 16 KAR 5:010, an educator preparation unit seeking program approval for a middle school, high school, Grades 5-12, or Grades P-12 certification program shall submit the following information:

(a) The course or courses the program has developed to ensure that each candidate demonstrates the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher];

(b) The syllabus for each course aligned to the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher];

(c) The assessments, including any scoring instruments, developed for each course aligned to the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom

Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher] to demonstrate the candidate's competency to provide classroom instruction aligned to each standard;

(d) The faculty assigned to teach each course aligned to demonstrate the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher]; and

(e) Evidence of qualifications of each faculty member assigned to teach a course aligned to the six (6) International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher[International Reading Association Standards 2010: Middle and High School Content Classroom Teacher].

Section 2. [(1) Each approved middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation program shall submit the following information to the Education Professional Standards Board by June 1, 2016:

(a) The course or courses the program has developed to ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(b) The syllabus for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

(c) The assessments, including any scoring instruments, developed for each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate's competency to provide classroom instruction aligned to each standard;

(d) The faculty assigned to teach each course aligned to demonstrate the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher; and

(e) Evidence of qualifications of each faculty member assigned to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

(2) An approved middle school, high school, Grades 5-12, or Grades P-12 certification educator preparation program that does not submit the information to the Education Professional Standards Board by June 1, 2016, as required by subsection (1) of this section, shall no longer admit candidates.

Section 3. Incorporation by Reference.

(1) "International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher", 2017, is incorporated by reference. ["The Standards for Reading Professionals—Revised 2010", 2010, 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, [100 Airport Road, 3rd Floor,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 21, 2023

FILED WITH LRC: August 1, 2023 at 1:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 23, 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 October 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 literacy preparation requirements for middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the literacy preparation requirements for middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the literacy preparation requirements for middle school, high school, Grades 5-12, and Grades P-12 certification educator preparation 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 the literacy preparation standards for middle school, high school, grades 5-12 and P-12 preparation programs to the most recent version.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the literacy preparation standards for middle school, high school, grades 5-12 and P-12 preparation programs to the International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the preparation standards for middle school, high school, grades 5-12 and P-12 preparation programs to the most recent version.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the preparation standards to the most current version.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 31 institutions of higher education with an approved educator preparation program, and those pursuing certification as a middle school, high school, grades 5-12 and P-12 teacher.

(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: Institutions will have to ensure that the programs leading to middle school, high school, grades 5-12 and P-12 teacher certification align to the International Literacy Association's Standards for the Preparation of Literacy Professionals 2017: Middle/High School Classroom Teacher.

(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): Compliance will result in preparation programs that align to the most current version of the national literacy standards, thus candidates for middle school, high school, grades 5-12 and P-12 teacher certification will be prepared under the standards.

(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.

(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: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all middle school, high school, grades 5-12 and P-12 teacher preparation programs.

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 EPSB 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.

(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 is not expected to generate any revenue during the first year.

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

(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: The EPSB is not imposing or collecting any fees under this administrative regulation. The process for preparation program review is already established, and no additional costs to that process are established by this amendment.

(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 costs intrinsic to operating an educator preparation program, there are no additional 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 additional costs for the EPSB or the regulated entities.

STATE BOARD OF ELECTIONS (Amendment)

31 KAR 4:196. Consolidation of precincts and precinct election officers.

RELATES TO: KRS 117.066

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of Elections may request, at any time, from any county, a resubmission of a timely filed petition to consolidate precincts and precinct election officers if the petition is found to be deficient or incomplete upon review by the State Board of Elections.

Section 2. The submission of Form SBE 74 shall be accompanied by no less than one (1) map scalable to a sheet of 8.5 in. x 11 in. paper of the county showing the location of any

consolidated precincts comprising a county-wide vote center.

Section 3. Incorporated by Reference. (1) "Petition to Consolidate Precincts and Precinct Election Officers", Form SBE 74, 08/2023[04/2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: August 15, 2023

FILED WITH LRC: August 15, 2023 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2023, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This 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 October 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment revises the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote to include information about parking, as required by KRS 117.066(3)(i).

(b) The necessity of this administrative regulation: This administrative regulation amendment is necessary given that 2023 Ky. Acts Ch. 74, sec. 2 requires the inclusion of parking information on the form submitted by counties to the State Board for the consolidation of precincts and precinct officials under KRS 117.066.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2.

(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 amendment revises the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote to include information about parking, as required by KRS 117.066(3)(i).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary given that 2023 Ky. Acts Ch. 74, sec. 2 requires the inclusion of parking information on the form submitted by counties to the State Board for the consolidation of precincts and precinct officials under KRS 117.066.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all county boards of election that wish to consolidate precincts and precinct election officers.

(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 administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

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? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections 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. KRS117.066(3), as amended by 2023 Ky. Acts Ch. 74, sec. 2., requires and authorizes the actions 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? It is not expected or intended that this administrative regulation will generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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 State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(18), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(4) requires the Kentucky Board of Pharmacy to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an internship program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns

Section 1. Definitions.

(1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Pharmacist intern" is defined by KRS 315.010(18).

(3) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. An applicant for registration as a pharmacist intern shall:

(1) File an Application for Registration as a Pharmacist Intern, Form I, with the board; and

(2) Submit proof of acceptance or graduation by a college or school of pharmacy approved by the board.

Section 3. An applicant for initial~~examination for~~ licensure as a pharmacist shall:

(1) Complete 1,500 hours of internship;

(2) Be awarded credit for internship for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) Be limited to internship credit:

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board; and

(b) Of twenty (20) hours per week during academic sessions in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;

(5) Be given credit for the following forms of internship:

(a) Completion of an academic experience program;

(b) Work performed in a pharmacy under the supervision of a preceptor;

(c) Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours, and the pharmacist intern shall file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or

(d) An internship performed outside of Kentucky if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) Not be awarded credit for an internship completed prior to

registration with the board.

Section 4. A pharmacist intern shall:

(1) Be issued a Registration Identification Card;

(2) Carry the Registration Identification Card when on duty;

(3) Show it upon request to a member of the board or its authorized agent; and

(4) Notify the board within thirty (30) days of any charge of:

(a) A felony;

(b) A violation of drug laws; or

(c) A violation of alcohol laws.

Section 5. ~~The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:~~

~~(1) (a) Currently enrolled in a college or school of pharmacy approved by the board; and~~

~~(b) Under the exceptions as established in Section 6 of this administrative regulation;~~

~~(2) A current applicant for licensure as a pharmacist in Kentucky; or~~

~~(3) Awaiting the results of an examination.~~

Section 6. The registration of a pharmacist intern shall not be revoked if the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) The intern is on a semester break; or

(2) Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate a temporary absence from enrollment and the absence is approved by the board.

Section 6. ~~Section 7.~~ A person who is not registered as a pharmacist intern shall not:

(1) Hold himself or herself out as a pharmacist intern; or

(2) Perform the duties of a pharmacist intern.

Section 7. ~~Section 8.~~

(1) A preceptor shall be a pharmacist who:

(a) Has a license in good standing;

(b) Has been licensed by the board for at least one (1) year; and

(c) Has requested in writing to be designated as a preceptor.

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his or her internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience[,] unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 8. ~~Section 9.~~ Credit for Non-Academic Experience Programs.

(1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a Pharmacist Preceptor's Affidavit, Form II.

(2) On or before graduation from a college or school of pharmacy, a pharmacist intern shall submit an Internship Report, Form III.

Section 9. ~~Section 10.~~ Credit for Academic Experience Programs.

(1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 10. ~~Section 11.~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration as a Pharmacist Intern", Form I, 08/2023~~03/2024~~;

(b) "Pharmacist Preceptor's Affidavit", Form II,

08/2023[03/2024];

(c) "Internship Report", Form III, 08/2023[03/2024]; and

(d) "Academic Experience Affidavit", Form IV, 08/2023[03/2024].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/professionals/Pages/Pharmacist-Interns.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: August 14, 2023

FILED WITH LRC: August 14, 2023 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24th, at 9:00 a.m. Eastern Time via zoom teleconference. 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 October 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the professional responsibilities of a pharmacist supervising a pharmacist intern and a pharmacist intern.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) requires the board to promulgate administrative regulations necessary to regulate and control the practice of pharmacists. This administrative regulation establishes the professional responsibilities of a pharmacist and a pharmacist intern under supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.050 requires the Board to promulgate regulations to ensure appropriate oversight of pharmacist interns.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures pharmacist interns are appropriately credentialed and supervised, as the statutory provisions require.

(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 language that conflicts with KRS 315.050 and removes the section five which prevented a pharmacist licensed in another state from applying to be an intern if they are no longer in school.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to ensure congruence with KRS 315.050.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment ensures the regulation is congruent with statutory language.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures the regulation is congruent

with statutory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board anticipates pharmacy students to be most impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacy students or those awaiting full licensure will need to familiarize themselves with the language of 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 are no expected costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacist students and those awaiting licensure will benefit from compliance with this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will not be a cost for implementing this regulation.

(a) Initially: no costs incurred.

(b) On a continuing basis: no costs incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacy students or pharmacists from another state applying to be a pharmacist intern.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.191(1)(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 administrative regulation will not generate revenue for the board 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? This administrative regulation will not generate revenue for the board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: not applicable.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for the regulated entity during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for the regulated entity for subsequent years.

(c) How much will it cost the regulated entities for the first year? There should be no costs for the regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? There should be no costs for the regulated entities for subsequent years.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: n/a

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

BOARDS AND COMMISSIONS **Board of Veterinary Examiners** **(Amendment)**

201 KAR 16:510. Fees for veterinarians.

RELATES TO: KRS 321.190, 321.193, 321.201, 321.211, 321.235, [321.240]321.320

STATUTORY AUTHORITY: KRS 321.193(2)[321.193(1), (5)], 321.201(1), 321.211(1), (5), 321.235(1)(c)[321.235(3)], 321.320[321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. KRS 321.211(1) mandates that veterinarians pay a renewal fee to the board as a condition of licensure. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement[those] fees for veterinarians. This regulation also establishes reduced and waived fees for military servicemembers.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. [Application Fees for Veterinarians.

(1) The application fee for a veterinarian shall be \$400.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

—Section 3.] Examination Fees for Veterinarians.

(1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International

Council for Veterinary Assessment (ICVA), its designee, or current test administrator.

(2) The fee for the Kentucky[State] Board of Veterinary Examiners state jurisprudence exam[Examination] shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16:530 or online equivalent form. In 2024, or at the time when the ICVA takes over the NAVLE eligibility review process, whichever is later, the KBVE shall no longer accept retake applications or collect retake fees.

Section 3. Fees for Special Permits. (1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be \$200.

(2) The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530, or online equivalent forms.

(3) A special permit shall not be renewed. Following expiration of a special permit, an individual shall reapply for a new special permit.

Section 4. Application Fees for Veterinarians.

(1) The application fee for a veterinarian license shall be \$200.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

Section 5.[Section 4.] Renewal Fees for Veterinarian Licenses[Veterinarians]. The following fees shall be paid in connection with licensure renewals:

(1)(a) Except as provided by paragraphs (b) and (c) of this subsection, the biennial renewal fee for licensure as a veterinarian in active status shall be \$400[\$200] if:

1. The Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment; and

2. The complete package is submitted to the board for review and approval not later than September 30 of the second year of the renewal biennium.

(b) For veterinarians who are initially licensed in the second year of the biennium between 365 days and 182 days prior to the end of the renewal biennium, the licensure renewal fee shall be reduced to \$200[\$400] during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(c) For veterinarians who are initially licensed in the second year of the biennium between 181 days and the last day of the renewal biennium, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2)(a) During the grace period established by KRS 321.211, a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board.

(b) The late fee for biennial renewal shall be \$200[\$400] in addition to the renewal fee as described in Section 4(1) or Section 6 of this administrative regulation.

(c) The veterinarian shall submit the complete Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 during the last year of the biennium.

(3) A veterinarian's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 6.[Section 5.] Reinstatement Fees for Veterinarians.

(1)(a) Except as provided by Section 6 of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(6)[KRS 321.211(3)], a veterinarian may pay a reinstatement fee of

~~\$1,000~~[\$400] and submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:540 or online equivalent form, including all required attachments, to the board for reinstatement of ~~their~~[his or her] license.

(b) A veterinarian shall not apply for a new license during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian shall apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 7.~~[Section 6.]~~ Inactive Status of License.

(1)(a) A veterinarian may request inactive licensure status in accordance with 201 KAR 16:580.

(b) ~~Outside of a renewal window.~~[If using] the Request for Licensure Status Change form ~~shall be required~~, and there shall not be a fee.

(c) ~~During an open renewal window.~~[If using] the Renewal Application for Veterinarians form ~~shall be required~~, and the required fee shall ~~paid~~[be] as established in subsection (2) of this section.

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be ~~\$275~~[\$400] per renewal biennium.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to a license in an inactive status that was not renewed by September 30 of the biennium.

(c) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate ~~their~~[his or her] license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of ~~\$400~~[\$200].

Section 8.~~[Section 7.]~~ Retirement of a Veterinary License.

(1)(a) A veterinarian may request to retire ~~their~~[his or her] license at any time.

(b) The one-time fee for this service shall be twenty-five (25) dollars, which shall be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580 or the Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent forms.

(2) Once a license is retired it shall not be reactivated. If a veterinarian holds a retired license and wishes to practice again, he or she shall apply to the board for a new license to practice veterinary medicine in the Commonwealth of Kentucky.

Section 9.~~[Section 8.]~~ Fee Reduction for Military Personnel.

(1) If a veterinarian applicant submits a copy of ~~their current military orders or~~[his or her] DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall waive or reduce fees as indicated in this section.

~~(a) [(1)]~~ For active duty military, active reserves, and National Guard service persons, an individual's initial application fees, the Kentucky State Exam fee, and the biennial renewal fees shall be waived.

~~(b) [(2)]~~ For retired military personnel with twenty (20) or more years of service, an individual's initial application fees shall be waived, and the biennial renewal fees shall be reduced by half, rounded to the nearest whole dollar.

~~(c) [(3)]~~ For any other military veteran, the initial application fees shall be waived.

~~(d) [(4)]~~ All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall still be met.

(2) In conformity with federal Pub.L. No 117-333, if a veterinarian applicant who is an active duty servicemember, or their spouse is an active duty servicemember, then all application fees to the board shall be waived when all of the following conditions are met:

~~(a) The servicemember, and the service member's spouse, if one exists, shall have their residency relocated to Kentucky for the duration of current military orders;~~

~~(b) The veterinarian shall hold at least one (1) license equivalent~~

~~in scope in another United States jurisdiction;~~

~~(c) Within ninety (90) days of relocating, the veterinarian shall register with the board on the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, in conformity with 201 KAR 16:540, Section 1(4).~~

~~(d) The servicemember shall submit a copy of their current military orders to the board;~~

~~(e) All veterinarian licensees held in any jurisdiction by the veterinarian shall remain in good standing; and~~

~~(f) The veterinarian shall submit to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.~~

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLIS, DVM, Board Chair

APPROVED BY AGENCY: August 1, 2023

FILED WITH LRC: August 1, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 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 prior to the end of the hearing. 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 October 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for persons seeking a veterinarian license from the board to gain the ability to practice veterinary medicine in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinarian licensure, as mandated in KRS 321.190, 321.193, 321.201(1), 321.211, and 321.235.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and 321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

(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: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS

Chapter 321.

FISCAL NOTE

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep all mandated board programs operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and 321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for licensure as a veterinarian.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,680 veterinarians, approximately 15 special permit holders, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure or permitting, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(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 anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering of fees is applied to applications from U.S. military servicemembers. Pursuant to public law Public Law No 117-333, the board provides reduced or waived fees for active duty military. Discharged and retired military servicemembers are also provided reduced or waived fees associated with licensure as a veterinary technician.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193(2), 321.201(1), 321.211(1), (5), 321.235(1)(c), 321.320

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$1.2 million on a biennial basis. Because veterinarians renew their license only every other year, the annual amount varies significantly. In F.Y.s ending in odd numbers, the regulation will only generate \$190,000; in F.Y.s ending in even numbers, the regulation will generate an additional \$1 million.

(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 filing will generate approximately \$1.2 million on a biennial basis. Because veterinarians renew their license only every other year, the annual amount varies significantly. In F.Y.s ending in odd numbers, the regulation will only generate \$190,000; in F.Y.s ending in even numbers, the regulation will generate an additional \$1 million.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$1.2 million biennially (see note above, in # 3(b))

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new veterinarian license, renew or reinstate, pay late fees, maintain an inactive license, or retire veterinarian license. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The fees established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as

mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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 (+/-): -\$750,000 annually.

Other Explanation: Additional expenses are anticipated by the KBVE

(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 shall not have a "major economic impact", as defined in KRS 13A.010(13).

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amendment)

201 KAR 16:512. Fees for veterinary technicians.

RELATES TO: KRS 321.190, 321.235[321.240], 321.441, 321.442

STATUTORY AUTHORITY: KRS 321.235(1)(c)[321.235(3)], 321.320[321.240(5)], 321.441(7)[321.441(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c)[321.240(5)] requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. KRS 321.441(7) mandates that veterinary technicians pay an annual fee to the board as a condition of licensure. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement[those] fees for veterinary technicians. This administrative regulation also establishes reduced and waived fees for military servicemembers.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Examination Fees for Veterinary Technicians. The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards (AAVSB), its designee, or current test administrator.

Section 3. Application Fees for Veterinary Technicians. (1) The application fee for a veterinary technician shall be fifty (50)[twenty-five (25)] dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

[Section 3. Examination Fees for Veterinary Technicians. The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards (AAVSB), its designee, or current test administrator.]

Section 4. Renewal Fees for Veterinary Technicians. The following fees shall be paid in connection with licensure renewals for veterinary technicians:

(1)(a) Except as provided by paragraph (b) of this subsection, the annual renewal fee for licensure as a veterinary technician in

active status shall be fifty (50)[thirty (30)] dollars if:

1. The Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment; and

2. The complete package is submitted to the board for review and approval not later than September 30.

(b) For a veterinary technician who is initially licensed 120 days prior to the end of the renewal period, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2)(a) A sixty (60) day grace period shall be allowed after September 30, during which time the licensed veterinary technician who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board.

(b) The late fee for annual renewal shall be fifty (50)[fifteen (15)] dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation.

(c) The veterinary technician shall submit the complete Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, including all required attachments, continuing education credits, and fee payment, to the board between October 1 and November 30.

(3) A veterinary technician's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians.

(1)(a) Except as provided by Section 6(3) of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration, a veterinary technician may pay a reinstatement fee of \$150[fifty (50)-dollars] and submit a complete Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:540 or online equivalent form, including all required attachments, to the board for reinstatement of their[his or her] license.

(b) A veterinary technician shall not apply for a new license during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinary technician shall apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of a License.

(1)(a) A veterinary technician may request inactive licensure status in accordance with 201 KAR 16:580.

(b) Outside of a renewal window,[If using] the Request for Licensure Status Change form, there shall not be a fee.

(c) During an open renewal window,[If using] the Renewal Application for Veterinary Technicians form shall be required, and the required fee shall paid[be] as established in subsection (2) of this section.

(2) Renewal of an inactive veterinary technician license.

(a) The annual renewal fee for inactive veterinary technician licensure status shall be twenty-five (25)[ten (10)] dollars per renewal period.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to licenses not renewed annually by September 30.

(c) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinary technician license status to active status.

(a) A licensed veterinary technician in inactive status may reinstate their[his or her] license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of \$100[twenty-five (25)] dollars.

Section 7. Retirement of License.

(1)(a) A veterinary technician may request to retire their[his or her] license at any time.

(b) The one-time fee for this service shall be ten (10) dollars, which

shall be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580, Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, or online equivalent forms.

(2) Once a license is retired, it shall not be reactivated. If a veterinary technician holds a retired license and wishes to practice again, he or she shall apply to the board for a new license to practice the profession of a veterinary technician in the Commonwealth of Kentucky.

Section 8. Fee Reduction for Military Personnel.

(1) If a veterinary technician applicant submits a copy of their current military orders or [his or her] DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall waive or reduce fees as indicated in this section.

(a) [(4)] For active duty military, active reserves, and National Guard service persons, an individual's initial application fees and annual renewal fees shall be waived.

(b) [(2)] For retired career military, an individual's initial application fees shall be waived, and the annual renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(c) [(3)] For any other military veteran, the initial application fees shall be waived.

(d) [(4)] All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall still be met.

(2) In conformity with federal Pub.L. No 117-333, if a veterinary technician applicant who is an active duty servicemember, or their spouse is an active duty servicemember, then all application fees to the board shall be waived when all of the following conditions are met:

(a) The servicemember, and the service member's spouse, if one exists, shall have their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinary technician shall hold at least one (1) license equivalent in scope in another United States jurisdiction;

(c) Within ninety (90) days of relocating, the veterinary technician shall register with the board on the Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:540 or online equivalent form, in conformity with 201 KAR 16:540, Section 1(4).

(d) The servicemember shall submit a copy of their current military orders to the board;

(e) All veterinary technician licensees held in any jurisdiction by the veterinary technician shall remain in good standing; and

(f) The veterinary technician shall submit to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: August 1, 2023

FILED WITH LRC: August 1, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 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 prior to the end of the hearing. 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 October 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for persons seeking a veterinary technician license from the board to gain the ability to practice veterinary technology in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinary technician licensure, as mandated in KRS 321.235(1)(c), 321.320, 321.441(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190, 321.441, and 321.442 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

(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: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep the board operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190, 321.441, and 321.442 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for licensure as a veterinary technician.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 592 veterinary technicians and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3):

Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and to ensure compliance. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering of fees is applied to applications from U.S. military servicemembers. Pursuant to public law Public Law No 117-333, the board provides reduced or waived fees for active duty military. Discharged and retired military servicemembers are also provided reduced or waived fees associated with licensure as a veterinary technician.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235(1)(c), 321.320, 321.441(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.

(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 filing will generate approximately \$25,000 on an annual basis.

(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 filing will generate approximately \$25,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$25,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new veterinary technician license, renew or reinstate, pay late fees, maintain an inactive license, or retire a veterinary technician license. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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 (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

(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 shall not have a "major economic impact", as defined in KRS 13A.010(13).

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amendment)

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

RELATES TO: KRS 321.200(1)(p), 321.207, 321.208, 321.235 STATUTORY AUTHORITY: KRS 321.207, 321.208, 321.235(1)(c)[321.235(3)], 321.320[321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) authorizes the Kentucky Board of Veterinary Examiners to permit qualified animal control agencies in the Commonwealth of Kentucky to apply for a registration certificate from the United States Drug Enforcement Administration (DEA) to purchase, manage, and utilize the specific drugs approved by the board for the purpose of euthanizing[euthanize] animals. KRS 321.207(4)[321.207(3)] authorizes the board to issue certificates to those persons who are deemed to be qualified to work as animal euthanasia specialists. KRS 321.235(1)(c)[321.240(5)] authorizes the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for animal control agencies and animal euthanasia specialists.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees.

(1) The application fee for issuance of a board certificate authorizing an animal control agency to apply for a restricted controlled substance registration with the United States Drug Enforcement Administration (DEA) shall be ~~\$300[fifty (50) dollars]~~. The fee shall be attached to the completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:550 or online equivalent form, including all required attachments. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, Section 1(3) prior to the issuance of a certificate.

(2) The application fee for a certified animal euthanasia specialist shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:560 or online equivalent form, including all required attachments.

Section 3. Renewal Fees for Animal Control Agencies.

(1)(a) Except as provided by paragraph (b) of this subsection, a certified animal control agency shall annually, on or before March 1, pay to the board a renewal fee of ~~\$300[fifty (50) dollars]~~ for the renewal of the certificate. The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment to the board.

(b) The renewal fee for the first renewal shall be waived for a certificate issued 120 days prior to the end of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ~~\$100[ten (10) dollars]~~ in addition to the renewal fee as described in Section 3(1) of this administrative regulation. The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment, to the board between March 2 and April 30 of the annual renewal period. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(3) An animal control agency restricted controlled substance registration certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency that has an expired restricted controlled substance registration certificate may be reinstated upon the submission of a completed Reinstatement Application for Animal Control Agencies form as found in 201 KAR 16:550 or online equivalent form, including all attachments, and the payment of a reinstatement fee of ~~\$600[seventy-five (75) dollars]~~. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, Section 1(3) prior to the reinstatement of a certificate. An animal control agency shall not apply for a new certificate during this five (5) year window; a reinstatement application shall be required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency shall reapply to obtain a board certificate authorizing restricted controlled substance registration with the DEA.

Section 4. Renewal Fees for Animal Euthanasia Specialists.

(1)(a) Except as provided by paragraph (b) of this subsection, a certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment to the

board.

(b) The renewal fee for the first renewal shall be waived for a certificate issued 120 days prior to the end of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the certified animal euthanasia specialist may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ~~fifty (50)[ten (10)]~~ dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572 or online equivalent form, including all required attachments and fee payments, to the board between March 2 and April 30 of the renewal period. The late fee for renewal, if applicable, shall not be reduced without board authorization.

(3) An animal euthanasia specialist certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal euthanasia certificate that has expired may be reinstated upon the submission of a completed Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:560 or online equivalent form, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal euthanasia specialist shall not apply for a new certificate during this five (5) year window; a reinstatement application shall be required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an individual shall reapply to obtain a certificate as an animal euthanasia specialist in the Commonwealth of Kentucky.

Section 5. Inactive Status for Animal Euthanasia Specialists.

(1)(a) A certified animal euthanasia specialist may request or be moved to inactive licensure status in accordance with 201 KAR 16:580. There shall not be a fee.

(b) There shall not be a renewal fee for a certified animal euthanasia specialist with inactive licensure status.

(2)(a) A certified animal euthanasia specialist may reinstate ~~their[his or her]~~ certificate to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of fifty (50) dollars only if the certificate was placed in inactive status as a result of:

1. The certificate holder's request; or
2. By severing employment with the affiliated animal control agency on record with the board.

MICHELLE M. SHANE, Executive Director

For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: August 1, 2023

FILED WITH LRC: August 1, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 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 prior to the end of the hearing. 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 October 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for animal shelters seeking an animal control agency certificate from the Kentucky Board of Veterinary Examiners (KBVE) to obtain a controlled substance registration from DEA, and for persons seeking an animal euthanasia specialist certificate from the board to gain the ability to euthanase stray, homeless, and injured animals in Kentucky in an effort to control the pet population in counties and municipalities.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for certificate holders of animal control agencies and animal euthanasia specialists, as mandated in KRS 321.207, 321.208, 321.235(1)(c), 321.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.207, 321.208, and 321.235(1)(c) specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

(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: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep all mandated board programs operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.207, 321.208, and 321.235(1)(c) specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for certification as an animal control agency and as an animal euthanasia specialist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 animal control agencies, 230 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to certification, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application and renewal

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings. The board does not receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE), and Kentucky counties and municipalities who own or contract with a KBVE-certified animal control agency and the employees of such certified agencies that are certified to euthanize animals.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, 321.208, 321.235(1)(c), 321.320

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$25,000 on an annual basis.

(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 filing will generate approximately \$25,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$25,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the

KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new animal control agency certificate, as well as the cost to renew or reinstate the certificate and the cost of late fees. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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 (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

(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 shall not have a "major economic impact", as defined in KRS 13A.010(13).

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amendment)

201 KAR 16:516. Fees – other fees.

RELATES TO: KRS 321.235(1)(c)[321.240, 321.201]

STATUTORY AUTHORITY: KRS 321.235(1)(c)[321.201(1), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) authorizes the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. KRS 321.201(1) authorizes the board to issue a special permit for the practice of veterinary medicine and to require a fee for the permit. This administrative regulation establishes fees for various services provided by the board and the fee for a special permit.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. [Fees for Special Permits.] (1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be fifty (50) dollars.

—(2) The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530 or online equivalent forms.

—**Section 3.] Fees for License Verification Letters and Letters of Good Standing.**

(1) The fee for a license verification letter or a letter of good standing shall be thirty (30)[ten (10)] dollars per jurisdiction. The fee shall be attached to a Request for Licensure Verification form or online equivalent form.

(2) Upon receipt of the request and payment, the board shall issue the requested letter and complete any forms required by regulatory bodies in other jurisdictions.

Section 3.[Section 4.] Fees for Board Credential Holder Mailing Lists.

(1)(a) The fee for a request to obtain a copy of the mailing list for a commercial purpose[~~of the board's licensees~~] shall be sixty (60)[fifteen (15)] dollars.

(b) The fee for a request to obtain a copy of the mailing list for a non-commercial purpose shall be thirty (30) dollars.

(c) The board shall not charge a fee to obtain a copy of the mailing list for the first three (3) requests in a calendar year to the Kentucky Veterinary Medical Association (KVMA) or its constituent in-state VMAs.

(2) The fee shall be attached to a Request for Mailing List form or online equivalent form.

(3)[(2)] Within thirty (30) calendar days of[Upon] the receipt of the request and payment, the board shall send a current credential holder[licensee] mailing list to the requesting party.

Section 4.[Section 5.] Fees for Duplicate Wall Certificates and Laminated Credentials.

(1) The fee for a duplicate wall certificate, including the board's seal, [~~or a new laminated wallet-sized card,~~] shall be thirty (30)[ten (10)] dollars.

(2) The fee for a new laminated wallet-sized card shall be thirty (30) dollars.

(3) The fee shall be attached to a Request for Printed Credentials form or online equivalent form.

Section 5. Request for Continuing Education Approval. The fee for an applicant to obtain board approval as Approved program of continuing education shall be fifty (50) dollars paid directly to the board and attached to the Request for Continuing Education Approval form as found in 201 KAR 16:590 or online equivalent form.

Section 6. Fees for Processing Payments. (1) The board may require a reasonable service charge for processing any payments submitted online or in paper form. The fees shall be calculated as a percentage of the underlying fee and shall not be higher than the board's current contracted rate for payment processing services.

(2) Service charge fees shall be non-refundable.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Licensure Verification", 8/2023[2/2020];

(b) "Request for Mailing List", 8/2023[2/2020];[~~and~~]

(c) "Request for Printed Credentials", 8/2023[3/2020]; and

(d) "Request for Continuing Education Course Approval", 8/2023.

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

MICHELLE M. SHANE, Executive Director
For STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: August 1, 2023

FILED WITH LRC: August 1, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, 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 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 prior to the end of the hearing. 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 October 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for services provided from the Kentucky Board of Veterinary Examiners (KBVE), including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(b) The necessity of this administrative regulation:

This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves additional services, as mandated in KRS 321.235(1)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.235(1)(c), specifically require the board to charge fees for services provided by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

(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: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and credential holder needs. These changes also assist the board in implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep the board operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also assist the board in implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.235(1)(c),

specifically require the board to charge fees for services provided by the board, including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with services provided by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,680 veterinarians, 592 veterinary technicians, future applicants, and former credential holders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to the KBVE providing services for licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for administered services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to provide these services. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235(3), 321.240(5)

(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 filing will

generate approximately \$18,000 on an annual basis.

(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 filing will generate approximately \$18,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$18,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to request services from the board, including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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 (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

(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 shall not have a "major economic impact", as defined in KRS 13A.010(13).

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.010(41), 150.290, 150.725, 150.740, 164.772

STATUTORY AUTHORITY: KRS 150.025(1), 150.280, 150.720, 150.730, 150.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in Kentucky.

Section 1. Definitions.

(1) "Approved laboratory" means:

(a) The National Veterinary Service Laboratory in Ames, Iowa; or

(b) Any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) "Captive cervid" means a cervid that is privately owned, born, and raised in captivity, and not considered wildlife as established in KRS 150.010.

(3) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(4) "Cervid" means a member of the family Cervidae.

(5) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(6) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(7) "Line post" means a post in a fence that is not a corner or end post.

(8) "Noncommercial captive cervid permit" means a permit issued prior to March 1, 2016 that allows a person to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements.

(1)

(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the fencing as established in this subsection and subsection (2) of this section.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)

(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)

(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) Crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are established in subparagraphs 1. through 4. of this paragraph:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural, or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall continuously be maintained in a game-proof condition.

(10) A noncommercial captive permit holder shall:

(a) Separate all adult males and females with fencing as established in this section;

(b) Not allow breeding, either by natural or artificial insemination;

(c) Not introduce any additional captive cervids to the facility;

(d) Complete and submit to the department a Captive Cervid Annual Reporting Form by February 28 of each year;

(e) Report any cervid deaths to the department by telephone at 800-858-1549 within forty-eight (48) hours and;

(f) Submit tissue specimens of all captive cervids that die in the permit holder's facility to an approved laboratory for CWD testing.

Section 3. Capture and Handling Facilities.

(1) Except as established in subsection (2) of this section, each captive facility shall have a squeeze chute or crush that facilitates inspection, handling, or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities established in subsection (1) of this section, the alternative shall be a dart gun or tranquilizer that immobilizes the animal.

Section 4. Tagging.

(1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture's Chronic Wasting Disease program requirements established in 302 KAR [20:066]22:150.

(2) Except as established in subsection (3) of this section, captive cervids over six (6) months old shall be uniquely identified with a plastic flop tag in at least one (1) ear that is clearly visible and identifiable.

(3) The department shall approve one (1) of the alternatives for plastic flop tags established in paragraphs (a) through (c) of this subsection for bona fide zoos, nature centers, or similar educational institutions upon written request:

(a) Lip or ear tattoo;

(b) Microchip; or

(c) Branding.

Section 5. Ingress and Egress.

(1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to the department by telephone at 1-800-858-1549.

(3) The permit holder shall send a written report to the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder shall report known ingress of wild cervids into the enclosure by sending a written report to the department at the same address established in subsection (3) of this section.

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements.

(1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the species established in subsections (1) through (4) of this section:

(1) Genus *Cervus* spp., except *Cervus elaphus nelsoni*;

(2) Genus *Axis* spp.;

(3) Roe deer (*Capreolus capreolus* and *Capreolus pygargus*); or

(4) Hybrids thereof.

Section 8. Captive Cervid Permits.

(1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance with the provisions of KRS 150.730.

(2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as established in subsection (11) of this section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the department.

(3) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association shall not be required to obtain or renew a captive cervid permit, but facilities

not accredited by the American Zoo and Aquarium Association shall be required to obtain and renew a captive cervid permit.

(4) A captive cervid permit shall be required for a facility owned or leased by a person wishing to hold captive cervids.

(5) A new noncommercial captive cervid permit shall not be issued to a facility after February 28, 2016.

(6) All wild cervids shall be removed from the facility prior to initial inspection.

(7) A permit shall identify the species and numbers of cervids being held.

(8) Duration.

(a) A captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February[;] and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February[;] and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(9) A holder of a noncommercial captive cervid permit prior to March 1, 2016, shall be allowed to hold captive cervids for the life of the animals, after which the permit shall not be valid.

(10) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility pursuant to KRS 150.735(3).

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (11) of this section.

(c) The purchaser or lessee of the facility shall:

1. Apply for transfer of the existing captive cervid permit on a department Captive Cervid Permit Transfer Application form;

2. Attach a copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer; and

3. Send all application materials to the department at #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a Captive Cervid Permit Application.

(e) A noncommercial captive cervid permit shall not be transferred.

(11) Inspections.

(a) Before a captive cervid permit or noncommercial captive cervid permit is issued, renewed, or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify the department to request an inspection that shall be conducted within thirty (30) days of receipt of the request.

(c) Each facility shall be inspected annually after issuance of a captive cervid permit or noncommercial captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.

(d) A Captive Cervid Facility Inspection Form shall be completed by a department law enforcement captain, who shall then forward the original copy to department headquarters for processing.

(12) Revocation or suspension.

(a) The department shall issue a notice of violation in the form of a certified letter to a person who is not in compliance with this administrative regulation, 302 KAR [20:066]22:150, or a Kentucky statute pertaining to the holding of captive cervids.

(b) The department shall suspend the permit of a person who has received a notice of violation until the person complies with this administrative regulation and applicable statutes.

(c) The department shall issue a citation to a person who has failed to comply with this administrative regulation or applicable statutes within sixty (60) days from the date of the notice of violation.

(d) If convicted of a violation of this administrative regulation, the department shall:

1. Revoke the permit; and

2. Seize the captive cervids.

(e) A person who has a captive cervid permit revoked or suspended shall not, without the written approval of the department:

1. Transfer or expand the facility; or

2. Sell, offer to sell, trade, transport, hunt, or slaughter captive cervids that are housed in that facility.

(13) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(14) Expansions.

(a) A facility may be expanded and shall conform to the fencing specifications established in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the department as established in subsection (11) of this section.

Section 9. Origin and Disposition of Captive Cervids.

(1) Cervids obtained from the wild shall only be held by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; and

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Intrastate Movement of Cervids.

(1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR [20:066]22:150.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in possession while transporting cervids.

Section 11. Selling Cervids. A permit holder who holds a captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Captive Cervid Permit Application", 2016 edition;

(b) "Captive Cervid Permit Transfer Application", 2016 edition;

(c) "Captive Cervid Facility Inspection Form", 2016 edition; and

(d) "Captive Cervid Annual Reporting Form", 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

APPROVED BY AGENCY: August 11, 2023

FILED WITH LRC: August 14, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2023, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing

will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes legal methods of holding and intrastate transportation of captive cervids.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish guidelines for the holding of captive cervids.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 150.010(41), 150.290, 150.725, 150.740, 164.772 since they establish the legal authority to breed and sale captive cervids, and establish permits for the holding of captive cervids.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the manner in which captive cervids may be held in captivity or moved within the state.

(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 references a new regulation by the Kentucky Department of Agriculture (KDA). 302 KAR 20:066 was repealed and a new regulation, 302 KAR 22:150 was promulgated and is now referenced.

(b) The necessity of the amendment to this administrative regulation: It is necessary to reference the appropriate cervid regulation for the KDA.

(c) How the amendment conforms to the content of the authorizing statutes: No change from statutory conformity with updated reference to KDA regulation.

(d) How the amendment will assist in the effective administration of the statutes: Ensures that KDFWR is referencing the proper KDA regulation within ours.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No entities/ individuals affected by this amendment.

(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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost associated with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefit to entities identified in question 3.

(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: State Fish and Game Fund

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

regulation, if new, or by the change if it is an amendment: No fee adjustment necessary

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees established

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals are treated the same with this administrative regulation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No governmental entities impacted by this amendment

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.010(41), 150.290, 150.725, 150.740, 164.772

(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 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 generated.

(c) How much will it cost to administer this program for the first year? No cost to administer.

(d) How much will it cost to administer this program for subsequent years? No cost to administer.

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 anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost saving anticipated.

(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)]

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

RELATES TO: KRS 61.878(1)(c), 224.1-400, 224.1-405, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.60-110, 224.60-120, 224.60-130, 224.60-135, 224.60-140, 224.60-150, 40 C.F.R. 280, Subpart H

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a)-(e) through (e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators. This administrative regulation establishes procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

Section 1. Applicability. (1) This administrative regulation shall establish~~establishes~~ the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application, become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective action due to a release from a petroleum storage tank.

(2) Federally owned facilities shall not be eligible for reimbursement from the PSTEAF in accordance with KRS 224.60-115(16).

(3) Eligible reimbursement~~for actions directed by the Underground Storage Tank (UST) Branch prior to October 6, 2011~~ shall be made in accordance with the reimbursement administrative regulations in effect at the time work was performed.

Section 2. Application for Assistance for Reimbursement. (1) A petroleum storage tank owner or operator seeking reimbursement from the Financial Responsibility Account (FRA) or the Petroleum Storage Tank Account (PSTA), shall:

(a) In accordance with 401 KAR 42:020, submit to the UST Branch a complete and accurate UST Facility Registration, DWM 4225, incorporated by reference in 401 KAR 42:020;

(b) Complete and submit a UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments;

(c) Enter into and submit, a contract in accordance with Section 3 of this administrative regulation;

(d) 1. Document that a release requiring corrective action from a petroleum storage tank has occurred; or

2. Receive a written directive from the UST Branch or Emergency Response Branch, in accordance with 401 KAR 42:060; and

(e) Subrogate, to the cabinet, the rights to recover costs of corrective action, for which the cabinet has compensated the person seeking reimbursement, from the person responsible or liable for the release in accordance with KRS 224.60-140(14)(c).

(2) If an application for assistance is found deficient by the UST Branch, a written correspondence, stating the deficiencies, shall be issued to the applicant.

(a) Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application for assistance to be denied.

(b) Denial of the application for assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.

(3) If the applicant complies with the requirements of subsection (1) of this section, the UST Branch shall determine the eligibility of the applicant to receive reimbursement from either the FRA or

PSTA, in accordance with Section 4 of this administrative regulation, and shall issue a written approval of the application for assistance.

(4) Reimbursement in accordance with an approved application for assistance shall be restricted to:

(a) Actions directed in writing by the UST Branch or Emergency Response Branch; and

(b) Initial and immediate response actions taken at a facility, prior to a written directive~~from the UST Branch~~, and not declared an environmental emergency by the cabinet, and subject to the reimbursement provisions established in Section 3.13 of the UST PSTEAF Reimbursement Rates.

(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes and the new petroleum storage tank owner or operator assumes responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall submit an amended:

(a) UST Facility Registration, DWM 4225, incorporated by reference in 401 KAR 42:020, in accordance with 401 KAR 42:020, Section 2(4), indicating a change in petroleum storage tank owner or operator; and

(b) UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments, within thirty (30) days of the transfer of the petroleum storage tank.

(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administrative regulation.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from an eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities at a facility.

(2) In accordance with KRS 224.60-130(1)(a), an eligible company or partnership shall not require payment from an applicant in an amount greater than the reimbursable amount.

(3) The contract shall be executed prior to commencing corrective action or site check activities.

(4) If a contract is revised, a copy of the revised contract shall be submitted to the UST Branch within thirty (30) days of the revised contract execution.

(5) If a contract is terminated and a new contract is executed:

(a) The petroleum storage tank owner or operator approved for PSTEAF reimbursement shall submit a notarized UST Affidavit of Termination of PSTEAF Contract, DWM 4280, to the UST Branch; and

(b) A copy of the newly executed contract shall be submitted to the UST Branch within thirty (30) days of contract execution~~;~~ and prior to the commencing of corrective action or site check activities by the new eligible company or partnership.

Section 4. Account Placement. (1) ~~If~~When participating in the FRA, a petroleum storage tank owner or operator shall be eligible to receive reimbursement for:

(a) Corrective action costs;~~;~~

(b) Site check activities directed in writing by the UST Branch after September 13, 2006, that do not confirm contamination above applicable screening levels;~~;~~ and

(c) Third-party claims in accordance with Section 12 of this administrative regulation, incurred on or after April 9, 1990, if the petroleum storage tank owner or operator has:

1. ~~(a)~~ Registered the petroleum storage tanks with the UST Branch, in accordance with 401 KAR 42:020, prior to the release requiring corrective action or site check activities;

2. ~~(b)~~ Maintained UST system release detection as required by 401 KAR 42:020. A petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:060, shall have been in compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

3. ~~(c)~~ Maintained corrosion protection for the petroleum storage tank system in accordance with 401 KAR 42:020;

4. ~~(d)~~ Maintained overfill and spill prevention for the petroleum storage tank system in accordance with 401 KAR 42:020 for those

tanks in use after December 22, 1998;

5.[(e)] Reported the release to the cabinet in accordance with KRS 224.1-400(11) and 401 KAR 42:060;

6.[(f)] Performed initial abatement procedures as required by the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; and

7.[(g)] Submitted to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, incorporated by reference in 401 KAR 42:060, if applicable.

(2) A petroleum storage tank owner or operator that is not eligible for participation in the FRA, shall be eligible for reimbursement from the (PSTA) for corrective action costs, incurred on or after April 9, 1990, or site check activities directed in writing by the UST Branch after September 13, 2006, that do not confirm contamination above applicable screening levels, if the petroleum storage tank owner or operator has registered the petroleum storage tanks with the UST Branch in accordance with 401 KAR 42:020.

Section 5. Entry Level. (1) ~~[For facilities with releases confirmed after September 13, 2006,]~~ A petroleum storage tank owner's or operator's entry level shall be equal to the financial responsibility requirement, as established in KRS 224.60-120(1), and shall be deducted from the eligible reimbursement, except as established in subsection (3) of this section.

(2) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the FRA and PSTA in accordance with subsection (1) of this section, regardless of a petroleum storage tank owner's participation in the Small Owner Tank Removal Account (SOTRA) in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the eligible reimbursement if the petroleum storage tank owner or operator performs:

(a) A site check directed by the UST Branch in accordance with 401 KAR 42:060, that does not confirm contamination requiring further action in accordance with 401 KAR Chapter 42;

(b) An initial and immediate response action in accordance with Section 2.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(c) Optional soil removal outside the excavation zone during permanent closure in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(d) Transportation and disposal of excavated material contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with 401 KAR 42:060; or

(e) Transportation and disposal of pit water contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(4) Upon request by the petroleum storage tank owner or operator, the UST Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil contamination only; or

2. Twenty-four (24) months from the discovery of the release, for groundwater contamination only or both soil and groundwater contamination; and

(b) Been issued a no further action letter without additional measures being required for an occurrence associated with the submittal of a UST[an] Application for Assistance for PSTEAF, DWM 4282.

(5) The applicable entry level shall be equal to the financial responsibility requirement as established in KRS 224.60-120(1), based on the number of tanks owned or operated by the petroleum storage tank owner or operator at the time of the occurrence associated with the submittal of an application for assistance.

Section 6. Newly Discovered UST Systems. (1) A newly

discovered UST system encountered at a facility during the performance of corrective action due to a release from a registered petroleum storage tank shall not affect a petroleum storage tank owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the petroleum storage tank owner or operator.

Section 7. Establishing the Reimbursable Amount for a Written Directive. (1) The reimbursable amount established for the completion of a written directive issued by the UST Branch shall be based on:

(a) The formulated task rates established in Section 3.0 of the UST PSTEAF Reimbursement Rates; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, a cost estimate shall be submitted by the owner or operator.

(2) The cost estimate shall include:

(a) A cost itemization to complete the individual task using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates applicable to individual components of the task;

(b) Three (3) bids from suppliers or manufacturers of corrective action equipment for individual equipment purchase or rental, exceeding \$3,000, if applicable, containing a description of the equipment provided by the supplier or manufacturer; and

(c) An estimate for materials to be purchased, if applicable.

(3) The UST Branch shall establish the reimbursable amount in a written directive based on the formulated task rates established in the UST PSTEAF Reimbursement Rates and applicable, approved, cost estimates.

(4) The cabinet shall attach to the written directive:

(a) An itemization of the reimbursable amount; and

(b) A UST Claim Request for Directed Actions, DWM 4286.

(5) The issuance of a written directive by the UST Branch shall, contingent upon compliance with~~[subject to]~~ the provisions of Section 8 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written directive, in accordance with KRS 224.60-140(5).

(6) Upon compliance with Section 8 of this administrative regulation, the reimbursable amount established by the UST Branch in a written directive shall, as applicable and in accordance with the UST PSTEAF Reimbursement Rates, be adjusted as established in this subsection.

(a) The reimbursable amount for over-excavation identified in the written directive issued by the UST Branch is an estimate of the tonnage to be removed and shall be based on the volume and density of material in the proposed excavation area. The UST Branch shall convert cubic yardage to tons using a density of one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

1.a. The soil tonnage verified through the submittal of weigh tickets; or

b. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation, not to exceed the tonnage estimate identified in the written directive from the UST Branch; and

2. The actual quantity of water encountered during an over-excavation that is removed, transported, and disposed of, contingent upon analytical confirmation that contaminant levels of the water exceed the applicable groundwater screening levels, and as documented by disposal manifests and limited to one (1) pit volume~~[:]~~;

(b) The reimbursable amount for a Mobile Dual-Phase Extraction Event, identified in a written directive issued by the UST Branch, shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site~~[:]~~;

(c) The reimbursable amount for operation and maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted~~[:]~~;

(d) If the UST Branch has not received and approved the UST

Application for Assistance for PSTEAF, DWM 4282, prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates, once an approved UST Application for Assistance for PSTEAF, DWM 4282, is submitted.[:]

(e) If the UST Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates, once the requirements of Section 3 of this administrative regulation are met.[:]

(f) If a written directive issued by the UST Branch cannot be complied with to the extent necessary to achieve a technically complete determination by the UST Branch, in accordance with 401 KAR 42:060, for reasons beyond the control of the applicant, or eligible company or partnership, the previously approved reimbursable amount established in the written directive shall, unless addressed in the written directive, be adjusted by the UST Branch, with reference to the UST PSTEAF Reimbursement Rates and the applicable, approved cost estimate, to deduct the cost of actions not completed.[:or]

(g) If the UST Branch rescinds an issued written directive prior to the completion of the entire scope of work identified in the written directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with reference to the UST PSTEAF Reimbursement Rates and the approved cost estimate, if applicable.

(7) Reimbursement for an individual corrective action equipment purchase or rental shall not include markup and shall be limited to:

(a) The original purchase price provided by the supplier or manufacturer, including applicable sales tax, if purchased; or

(b) Rental costs not exceeding the purchase price provided by the supplier or manufacturer, if rented.

(8) The UST Branch shall have final authority to determine all reimbursable actions including site characterization and corrective action technologies in accordance with 401 KAR 42:060.

Section 8. Reimbursement for a Written Directive. (1) Reimbursement for a written directive shall be made after the following actions are completed:

(a) The submittal and approval of a UST Application for Assistance for PSTEAF, DWM 4282, in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request for Directed Actions, DWM 4286, which ~~shall include a~~[includes] payment verification affidavit as required by KRS 224.60-140(18), ~~[provided—]~~with the written directive ~~that~~ has been completed, signed, and submitted to the UST Branch;

(c) The submittal of a UST Payment Waiver, DWM 4289, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d) The submittal of weigh tickets and invoices documenting the actual cost of items that do not have a formulated task rate established in the UST PSTEAF Reimbursement Rates or other required backup documentation as indicated in the written directive;

(e) The technical report submitted in response to the written directive once determined by the UST Branch to be technically complete in accordance with the written directive and 401 KAR 42:060; and

(f) Payment has been received for all applicable annual fees in accordance with KRS 224.60-150 and 401 KAR 42:020, Section 2.

(2) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with the requirements established in accordance with Section 19 of this administrative regulation.

(3) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation.

(4) If the contract with the eligible company or partnership designated on a written directive is terminated prior to the commencement of reimbursable activities in response to the written directive, the obligation and guarantee of payment of the reimbursable amount shall be void.

(5) The information completed by the UST Branch on the UST Claim Request for Directed Actions, DWM 4286, attached to the written directive, shall not be modified by the applicant or the eligible company or partnership designated on the written directive.

(6) If the applicant fails to correct a claim-related deficiency or to supply additional claim information, within thirty (30) days of written notice from the UST Branch, that portion of the claim shall be denied.

(7) The UST Branch shall issue a determination in accordance with KRS 224.60-140(7) as to whether or not the costs submitted in the claim are eligible for reimbursement.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST Branch, in accordance with KRS 224.60-130(1)(n).

(9) If a request to re-evaluate the reimbursable amount, established in accordance with Section 7 of this administrative regulation, is submitted in accordance with Section 14 of this administrative regulation, and a not-to-exceed amount is warranted, final reimbursement shall be made on a time and material basis, which shall require~~the following supporting documentation~~:

(a) An itemization of the eligible company or partnership invoice with supporting documentation;

(b) Itemized subcontractor and vendor invoices with supporting documentation; and

(c) Time sheets to support all personnel time billed for the completion of the scope of work identified in the written directive.

Section 9. Reimbursement for Actions Not Directed in Writing.

(1) Reimbursement shall be made for the following actions in accordance with the applicable formulated task rates established in the UST PSTEAF Reimbursement Rates:

(a) Optional Soil Removal Outside the Excavation Zone at permanent closure, in accordance with Section 4.16 of the UST Corrective Action Manual incorporated by reference in 401 KAR 42:060;

(b) Transportation and disposal, treatment, or recycling, at a permitted facility, of material or water contaminated above applicable screening levels, removed from within the excavation zone, at permanent closure, in accordance with the UST Corrective Action Manual incorporated by reference in 401 KAR 42:060;

(c) Initial and immediate response actions, identified in Section 3.13 of the UST PSTEAF Reimbursement Rates, taken at a facility in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, prior to a written directive from the UST Branch or prior to the date of a declared environmental emergency by the cabinet;

(d) Transportation and disposal of drums containing purged water or soil cuttings associated with actions directed in accordance with 401 KAR 42:060;

(e) Encroachment permit renewals necessary to complete directed actions; and

(f) Unscheduled maintenance of a remediation system installed in accordance with approved corrective action activities. Pre-approval shall be required for one (1) unscheduled maintenance event that will exceed \$3,000 for material and equipment.

(2) Reimbursement shall be made after the following actions are completed:

(a) The approval of a UST Application for Assistance for PSTEAF, DWM 4282, in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request for Actions Not Directed, DWM 4285, which ~~shall include the~~[includes] payment verification affidavit as required by KRS 224.60-140(18), ~~that~~ has been completed, signed, and submitted to the UST Branch;

(c) The submittal of a UST Payment Waiver, DWM 4289, executed by each affected vendor or subcontractor, as applicable,

in accordance with KRS 224.60-140(18);

(d) The submittal of required backup documentation as identified on the instruction sheet associated with each worksheet;

(e) Payment has been received for all applicable annual fees in accordance with KRS 224.60-150 and 401 KAR 42:020 Section 2;

(f) The UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet, DWM 4288, has been completed and submitted to the UST Branch for optional soil removal outside of the excavation zone at permanent closure in accordance with 401 KAR 42:060 for actions listed in subsection (1)(a) of this section, if applicable;

(g) The UST Miscellaneous Tasks Reimbursement Worksheet, DWM 4287, has been completed and submitted to the UST Branch for actions listed in subsection (1)(b), (c), (d), (e), or (f) of this section, if applicable; and

(h) The technical report submitted in accordance to subsections (1)(a), (b), or (c) of this section has been deemed technically complete, if applicable, in accordance with 401 KAR Chapter 42.

(3) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with the requirements established in accordance with Section 19 of this administrative regulation.

(4) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation.

(5) The UST Branch may require additional information and documentation, if necessary to determine that a request for reimbursement is reasonable and necessary.

(6) If the applicant fails to correct a claim-related deficiency, or to supply additional claim information, within thirty (30) days of written notice from the cabinet[UST Branch], that portion of the claim shall be denied.

(7) The UST Branch shall issue a determination, in accordance with KRS 224.60-140(7), as to the eligibility for reimbursement of the costs submitted in the claim.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST Branch in accordance with KRS 224.60-130(1)(n).

Section 10. Facility Restoration. (1) The UST Branch shall issue a written directive in accordance with Section 7 of this administrative regulation, once the applicant provides the information required by Section 5.9.2 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(2) If the UST Branch does not issue a written directive in accordance with subsection (1) of this section, the applicant may submit an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions.

(3) Reimbursement for facility restoration activities shall be made in accordance with Section 8 of this administrative regulation.

Section 11. Payment for Actions Directed by the Environmental Response Team. Payment for actions directed and documented by the Environmental Response Team during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with KRS Chapter 224.

Section 12. Third-Party Claims. (1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or non-sudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the FRA.

(2) A petroleum storage tank owner or operator shall be eligible to apply for reimbursement or payment for a third-party claim if:

(a) The cabinet has approved an application for assistance in accordance with Section 2(3); and

(b) The owner or operator has maintained compliance with the eligibility requirements for participation in the FRA in effect at the time the application for assistance was approved.

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the

eligibility of the FRA in accordance with Section 4 of this administrative regulation, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

(4) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new UST Application for Assistance for PSTeAF, DWM 4282; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of service of process of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(5) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, upon review and concurrence by the cabinet.

(6)(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment, or reimburse an owner or operator for payment of the judgment, in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

(7) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(a) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(b)1. The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000 per occurrence.

2. Claim requests shall be submitted on the UST Third-Party Claim, DWM 4292.

(c) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(d) Reimbursement for third-party claims shall be made in accordance with Section 21 of this administrative regulation.

(e) Payment of a third-party claim shall be made after approval by the cabinet.

Section 13. Eligible and Ineligible Costs. (1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Initial and immediate response actions directed by or approved by the UST Branch or Emergency Response Branch[taken outside of the excavation zone,] in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060[~~, prior to a written directive from the UST Branch or prior to the date of a declared emergency by the cabinet~~];

(b) Site checks at a facility, in accordance with a written directive issued after September 13, 2006 by the UST Branch;

(c) Tank and line tightness testing as requested in writing by the UST Branch in conjunction with site check, site investigation, or corrective action activities for a facility;

(d) Performance of "corrective action" as defined by KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the UST Branch;

(e) Transportation, disposal, or treatment at a permitted facility, and replacement of excavated material, contaminated above applicable screening levels:

1. Within the excavation zone, excluding the tank volume, in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; or

2. Outside the excavation zone, in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(f) Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water, contaminated above screening levels encountered:

1. Within the excavation zone, during activities in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; and

2. During activities in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(g) A fifteen (15) percent total markup above the ~~invoice cost of materials purchased~~ associated with a task for which there is not a formulated task rate established in the UST PSTEF Reimbursement Rates;

(h) ~~[An eligible company or partnership that employs an unaffiliated subcontractor or other vendor shall receive a fifteen (15) percent markup for costs that do not have a formulated task rate established in the UST PSTEF Reimbursement Rates;~~

(i) Surface material to replace removed or damaged areas directly associated with corrective action activities, upon written direction by the UST Branch; and

(j) Other costs, associated with corrective action activities, as required in a written directive issued by the UST Branch for the facility.

(2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Except as established in subsection (1) of this section, costs incurred prior to written approval by the UST Branch;

(b) Costs incurred for the purpose of complying with the requirements of 401 KAR 42:020;

(c) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(d) A cost associated with a release from a storage tank exempt from requirements of 401 KAR Chapter 42 as established in KRS 224.60;

(e) A cost or cost recovery for governmental emergency services;

(f) A cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(g) Preparation of documentation, cost estimates, written agreements, contracts, or client invoices that will be submitted to the UST Branch for reimbursement purposes;

(h) Except as established in 401 KAR 42:330, costs related to the removal, or actions incidental to the removal of a tank system;

(i) Road mileage beyond 1,000 miles round trip;

(j) Reimbursement for work or a portion of work, performed at a facility if the results of laboratory analysis do not confirm the need for corrective action, or for actions to achieve contaminant concentrations less than those directed by the cabinet, except for investigatory or corrective actions directed from the UST Branch in writing;

(k) Work performed that is not in compliance with safety codes;

(l) Free product recovery from monitoring wells or borings during corrective action activities, unless directed in writing by the UST Branch;

(m) Costs incurred to replace a monitoring well destroyed, damaged, or that cannot be accessed or located due to actions within the control of the applicant;

(n) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(o) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;

(p) Costs relating to compliance with a local program having corrective action standards more stringent than those directed by the cabinet;

(q) A laboratory "rush" fee, unless directed by the UST Branch;

(r) Costs of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or costs for an analytical laboratory to become certified or accredited in accordance with the requirements of KRS 224.60-130(1)(a) and

Section 20 of this administrative regulation;

(s) Laboratory costs incurred after the laboratory certification eligibility expiration date;

(t) Costs incurred for additional assessment or corrective action plan modification necessary as a result of delayed implementation of the corrective action plan, beyond the deadline established in writing by the UST Branch;

(u) Costs incurred as a result of delayed implementation of a written directive, beyond twelve (12) months from the issuance date of the deadline established in writing by the UST Branch;

(v) The portion of a lease or rental cost for capital equipment that exceeds the purchase price of the equipment;

(w) Equipment replacement costs covered by equipment warranty;

(x) Payment of the owner's or operator's personnel for overtime or for staff time in planning or implementing "corrective action" as defined by KRS 224.60-115(4);

(y) Out-of-state travel expense, including air fare;

(z) Contractor markup expense for a normally expected overhead item or in-stock material;

(aa) Contractor markup expense for personnel costs;

(bb) Markup for pass-through costs for utilities and employee expense accounts;

(cc) Fifteen (15) percent markup for the costs of corrective action for an eligible company or partnership that employs a subcontractor, a subsidiary company, or other vendor, that is affiliated with the eligible company or partnership or a principal of the eligible company or partnership;

(dd) Except as directed by or approved by the cabinet during an emergency response in accordance with subsection (1)(a) of this section, overtime for eligible company or partnership personnel exceeding forty (40) hours, individually, during a standard workweek;

(ee) Actions resulting from contractor error or negligence;

(ff) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(gg) Costs covered by the contractor's liability insurance;

(hh) Costs covered by insurance payable to the owner or operator;

(ii) Interest on an overdue account or loan;

(jj) Loss of business, income, or profits;

(kk) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Preparation or submittal of documentation related to the reimbursement process; or

4. Other legal services not integral to the performance of corrective action;

(ll) Corrective action costs incurred after the eligible company or partnership eligibility expiration date;

(mm) Corrective action activities performed subsequent to the issuance of a no further action letter, unless directed in writing by the UST Branch;

(nn) Facility or aesthetic improvements, including costs to upgrade the facility, except for approved surface replacement in accordance with Section 10 of this administrative regulation;

(oo) Decreased property values for the facility;

(pp) Costs of surface material replacement for areas not removed or damaged as part of corrective action; and

(qq) Unreasonable or unnecessary costs and expenses for corrective action, in accordance with KRS 224.60-140(5).

Section 14. Re-Evaluation of a Reimbursable Amount. (1) If the applicant determines that the scope of work or portion thereof, required in a written directive cannot be completed without exceeding the [total]-reimbursable amount established[set forth in the written directive], a request for re-evaluation of the reimbursable amount may be submitted to the UST Branch. The request for re-evaluation shall include:~~on-~~

(a) The UST Re-Evaluation of a Reimbursable Amount, DWM 4291 ~~form~~; ~~and shall include:~~

(b) ~~[(a)] If applicable, [The submittal of] three (3) current written estimates from subcontractors in the area in which the facility is located, for services or materials not provided by the contracting company or partnership, from subcontractors in the area in which the facility is located, if applicable;~~

(c) If applicable, a copy of any previously approved cost estimate that will be used to perform any portion of the directive; and

(d)[(b) The submittal of] An itemized cost breakdown of the eligible company's or partnership's time and materials to be used for the completion of the written directive; and

(e) The costs calculated using] The personnel and equipment rates established in Section 5.2[3.0] of the UST PSTEF Reimbursement Rates shall be used for the contracted eligible company employee rate charges.

(2)(a) The UST Branch shall review the re-evaluation request and determine if a new reimbursable amount shall be established.

(b) The review shall be based upon[itemized cost breakdown, determine] the reasonable and necessary costs for the scope of work.

(c) The UST Branch shall include a fifteen (15) percent markup for the contracted eligible company in addition to the total requested amount. The fifteen (15) percent markup shall not apply to personnel rates for the contracted eligible company, which shall be as established in Section 3.0 of the UST PSTEF Reimbursement Rates.

(3) If the amount established in accordance with subsection (2) of this section:

(a) Exceeds the initial reimbursable amount established, the UST Branch shall establish and;

(a) Rescind the original written directive, and issue] a new reimbursable[written directive establishing a not-to-exceed] amount[if the itemized cost breakdown, as adjusted for reasonable and necessary costs, exceeds the reimbursable amount]; or

(b) Is less than or equal to the initial reimbursable amount established, the UST Branch shall deny the request for re-evaluation[, established in the original directive letter, if costs itemized are at or below the initial reimbursement amount].

(4)(a)[(3)] If the establishment of a new reimbursable[not-to-exceed] amount is warranted, [in accordance with subsection (2)(a) of this section,]final reimbursement shall be determined by the UST Branch based upon documentation received and shall include a fifteen (15) percent markup, except for the contracted eligible company personnel rates.[on an actual time and materials basis, and]

(b) The appropriate supporting documentation shall be submitted to the UST Branch, in accordance with Section 8[(9)] of this administrative regulation, as an attachment to the claim.

Section 15. Reconsideration for a Claim. (1) An applicant may request a reconsideration of a denial of a claim request, or portion thereof by submitting a completed UST Reconsideration Request, DWM 4290, within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the denial, which shall include:

(a) A statement of the grounds for reconsideration;

(b) Supporting documents; and

(c) If applicable, other evidence not previously considered.

(2) The cabinet shall review the previous claim decision[, and shall revise the claim if the evidence accompanying the request warrants revision by demonstrating clear error or through submittal of additional documentation.

(3) The cabinet shall not reconsider a claim more than once without new supporting documentation.

Section 16. Signatures. (1) Application and reimbursement forms required by this administrative regulation for which a signature is required shall be signed by:

(a) An eligible petroleum storage tank owner or operator;

(b) Legally authorized representative; or[as follows:]

(c)[(a) For a corporation or limited liability company, by:

1. A president, vice-president of the corporation in charge of a principal business function, or member, or any other person who performs similar policy or decision-making functions for the corporation; or

2. A legally authorized representative or agent, except that a representative of an eligible company or partnership shall not have signatory authority for an owner or operator;

(b) For a partnership, sole proprietorship or individual, by:

1. A general partner;

2. Proprietor; or

3. Individual named as the applicant;

(c) For a state or local governmental agency or unit, or non-profit organization, by:

1. A principal executive officer, which includes a chief executive officer of an agency, or a senior executive officer, having responsibility for the overall operations of a principal geographic unit; or

2. A ranking elected official; or

(d)] A person designated by a court to act on behalf of the eligible petroleum storage tank owner or operator.

(2) A claim form or application for assistance shall also be signed by an authorized representative of the eligible company or partnership, unless corrective action commenced prior to July 1, 1999.

(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 17. Financial Audits. (1) The cabinet may, in accordance with subsection (2) of this section, conduct[An entity shall be subject to] a financial audit if the[if it is an] entity is referenced in KRS 224.60-130(1)(k).

(2) The cabinet shall have the authority to audit an entity if:

(a) A required document, or other document relevant to a cabinet determination, submitted to the cabinet appears to be fraudulent; or

(b) There is evidence that the entity has violated a federal or state law[, or a requirement of KAR Title 401 [of the Kentucky Administrative Regulations]related to its actions.

(3) Upon written request by the cabinet, records, as established in KRS 224.60-130(1)(k), shall be provided to the cabinet during a financial audit.

(4) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit or a rescheduled audit.

(5)(a) If the petroleum storage tank owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible company or partnership or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility, for which costs have been reimbursed by the cabinet.

(6) If the audit by the cabinet finds an improper, irregular, or illegal use of any monies received directly or indirectly from the cabinet, or that the monies were obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.

(7)(a) Reimbursements to an owner or operator that fails to cooperate with an audit shall be grounds for[subject to] recovery by the cabinet.

(b) Failure by an entity, that contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the recovery of funds paid by the cabinet for corrective action services at that facility.

Section 18. Account Balance. (1) The unobligated balance of the FRA shall not be less than \$1,000,000, to ensure a reserve balance adequate to comply with federal financial responsibility requirements for participants in the account.

(2)(a) If the unobligated balance of the FRA is \$1,000,000, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than \$1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than \$1,000,000.

(b) If the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance

shall be determined by the date of the claim submittal.

(c) During the suspension, all written directives from the cabinet shall be issued in accordance with Section 21 of this administrative regulation.

Section 19. Eligible Companies and Partnerships. (1) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or partnership shall:

(a) Employ or contract with a professional engineer or a professional geologist;

(b) Be authorized to conduct business in the Commonwealth of Kentucky and remain active, and in good standing, with the Kentucky Secretary of State;

(c) Hold, in good standing, all licenses, permits, training certifications, or other authority required to perform corrective action services, or otherwise conduct business, in Kentucky;

(d)1. Maintain, at a minimum, general and professional liability insurance and pollution or property coverage in the amount of \$1,000,000; and

2. Add the cabinet as an additional interest on the policy to be notified, by the insurance company, if there is a lapse of insurance coverage;

(e) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet to perform corrective action services;

(f) Submit the UST Application for PSTEAF Eligible Companies or Partnerships, DWM 4284; and

(g) Sign an application or claim payment request in addition to the eligible owner or operator. The eligible company or partnership shall certify that:

1. The information provided in the claim is true and correct; and

2. Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR 42:060 and this administrative regulation.

(2) Application requirements for a company or partnership eligibility shall include submittal of:

(a) A completed UST Application for PSTEAF Eligible Companies or Partnerships, DWM 4284;

(b) Verification of the employment or contracting of a professional engineer or a professional geologist; and

(c) A list of the names and address of officers and principals of the applicant.

(3) The cabinet shall inspect the records and business premises of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(4) The cabinet shall require additional information and documentation if necessary to verify information in the application.

(5) An application for eligible company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not comply with the requirements of subsection (1) of this section;

(c) Fails to allow cabinet staff to access company records for audit purposes in accordance with Section 17 of this administrative regulation;

(d) Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e) Provides false or misleading information in the application; or

(f) Fails to maintain general and professional liability insurance and pollution or property coverage.

(6) An applicant whose application for company or partnership eligibility is denied may appeal the determination. Appeal shall be made[.] by requesting a reconsideration in accordance with Section 15 of this administrative regulation.

(7) The cabinet shall issue a letter of eligibility to a qualifying applicant.

(8) An amended application for a company or partnership shall be submitted if:

(a) The information in the UST Application for PSTEAF Eligible Companies or Partnerships, DWM 4284, has changed; or

(b) Requested by the cabinet to submit an updated application upon the receipt of information indicating a change to application information.

(9) Eligibility and renewal procedures shall be as established in paragraphs (a) through (d) of this subsection.

(a) The cabinet shall issue a letter of eligibility to each company or partnership that successfully complies with this administrative regulation.

(b) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(c) An application for eligibility renewal shall be submitted to the cabinet on the UST Application for PSTEAF Eligible Companies or Partnerships, DWM 4284.

(d) The failure of the company or partnership, under contract with an owner or operator, to renew eligibility shall render corrective action costs incurred after the expiration date ineligible for reimbursement.

(10) Revocation of eligibility procedures shall be as established in paragraphs (a) and (b)[through-(d)] of this subsection.

(a) A letter of eligibility issued in accordance with this administrative regulation shall be revoked if the eligible company or partnership:

1. No longer complies with the eligibility requirements established in subsection (1) of this section;

2. Employs, or has a business relationship with, an employee or agent that knowingly submits materially false information or documentation, or a false payment request, to an owner, operator, or the cabinet;

3. Has a current officer, director, or principal of that company, that has been convicted of, or found liable for, civil or criminal fraud or an environmental crime;

4. Has failed to comply with the terms established in Section 17 of this administrative regulation; or

5. Obtained eligibility through fraud or misrepresentation.

(b) The cabinet shall issue a letter by certified mail notifying a noncompliant company or partnership that its eligibility has been revoked by action of the cabinet.

Section 20. Laboratory Certification. (1) Applicability and requirements for PSTEAF eligibility criteria for laboratory certification shall be as established in this section.

(a) Owners or operators seeking reimbursement from the PSTEAF for analytical testing shall utilize a laboratory certified in accordance with this section.

(b) This section shall apply to analytical testing performed on or after October 1, 1999.

(c) Owners or operators of a petroleum storage tank that fail to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

(2) Certification requirements for laboratory certification shall be as established in paragraphs (a) and (b)[through-(d)] of this subsection.

(a) A laboratory shall demonstrate current accreditation by submitting documentation of certification by:

1. The American Association for Laboratory Accreditation; or

2. A state approved to accredit environmental laboratories, in accordance with National Environmental Laboratory Accreditation Program requirements and standards.

(b) A laboratory seeking certification from the cabinet shall submit[.]:

1. A completed UST Application for Laboratory Certification, DWM 4283; and[.]

2.[1.] [The application shall include.] Proof of accreditation as established in paragraph (a) of this subsection.

[2. The laboratory shall be capable of analyzing each of the parameters listed in Table 7 and Table 8 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, using at least one (1) of the acceptable methods listed in the tables, except for mobile laboratories.]

(3) The cabinet shall reimburse a petroleum storage tank owner

or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

(4) Requirements for maintaining laboratory certification shall be as established in paragraphs (a) through (c) of this subsection.

(a) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(b) If a certified laboratory's accreditation, in accordance with subsection (1) of this section, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

~~(c) 1. A laboratory holding valid certification from the UST Branch issued prior to October 6, 2011 shall not be required to submit a new UST Application for Laboratory Certification, DWM 4283.~~

~~2. In order to maintain certification status, the certified laboratory shall comply with this subsection.~~

~~(d) If a certified laboratory fails to maintain certification in accordance with this subsection of this subsection, the laboratory shall be required to submit a UST Application for Laboratory Certification, DWM 4283, in accordance with subsection (2).~~

(5)(a) The cabinet shall revoke a certification if the applicant:

1. Obtains the certification through fraud or misrepresentation; or

2. Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(b) The cabinet shall, within ten (10) days of a revocation determination, notify the laboratory, in writing, of the revocation of certification.

Section 21. Facility Ranking System. (1) Upon a determination of insufficient PSTEAF funding to initiate corrective action at facilities, facilities shall be ranked according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to prioritize the completion of corrective action and the subsequent reimbursement of eligible costs.

(2) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(3) Actions performed by, or on behalf of, the cabinet in accordance with KRS 224.60-135(2) shall not be subject to the ranking system.

(4) Facilities performing site checks or initial abatement, at the written direction of the cabinet in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(5) Those facilities for which the owner or operator has verified, through submittal of a notarized UST Affidavit of Waiver for PSTEAF Reimbursement, DWM 4281, that reimbursement from the PSTEAF will not be sought shall not be subject to the ranking system.

(6)(a) Facilities eligible to participate in the FRA and the PSTA shall be ranked for purposes of addressing the completion of corrective action.

1. Facilities with releases for which the cabinet has not issued a no further action letter shall be a Rank 1, if:

a. Contamination is confirmed within domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels established in 401 KAR Chapter 8; or

b. "Vapor intrusion", as defined by 401 KAR 42:005, is confirmed in occupied residential or commercial buildings.

2. All other facilities with releases for which the cabinet has not issued a no further action letter shall be a Rank 2.

(b) Facilities shall be further categorized within their respective

rank based on the financial ability of the owner or operator.

1. Facilities shall be placed in Category 1 within their respective rank if:

a. The owner's or operator's average total income for the last five (5) years is less than or equal to \$100,000; or

b. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

2. Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$100,000.

3. The cabinet shall utilize the information provided in an owner's or operator's application for assistance for PSTEAF, for purposes of determining financial ability to perform corrective action.

(c) The cabinet shall be provided access to a facility for the purpose of verifying classification. Refusal by an owner or operator to allow access requested by the cabinet shall render the facility ineligible for reimbursement from the cabinet.

(d) If the cabinet receives misrepresentations[,] or otherwise inaccurate information, or receives new information related to specific facilities, it shall amend facility rankings and categories in accordance with this subsection of this section.

(e) Issuance of written directives shall be prioritized for facilities within the FRA and the PSTA, respectively, according to rank and category, in the following order:

1. Rank 1, Category 1;

2. Rank 1, Category 2;

3. Rank 2, Category 1; and

4. Rank 2, Category 2.

(f) The cabinet shall consider the current legislatively enacted budget and available funding in making the allocations established in subsection (1) of this section.

(g) The cabinet shall notify an owner or operator of the decision to suspend written directives for rankings within either the PSTA or the FRA, upon a determination of insufficient PSTEAF funding to initiate corrective action in all rankings.

Section 22. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive.

(2) The extension request shall be received by the UST Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would be equitable, does not impact the PSTEAF's financial viability, and would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for any requirements established in Section[Sections] 12 or 15 of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "UST Affidavit of Termination of PSTEAF Contract", DWM 4280, September 2019;

(b) "UST Affidavit of Waiver for PSTEAF Reimbursement", DWM 4281, September 2019;

(c) "UST Application for Assistance for PSTEAF", DWM 4282, September 2019;

(d) "UST Application for Laboratory Certification", DWM 4283, August 2023[September 2019];

(e) "UST Application for PSTEAF Eligible Companies or Partnerships", DWM 4284, September 2019;

(f) "UST Claim Request for Actions Not Directed", DWM 4285, September 2019;

(g) "UST Claim Request for Directed Actions", DWM 4286, September 2019;

(h) "UST Miscellaneous Tasks Reimbursement Worksheet", DWM 4287, August 2023[September 2019];

(i) "UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet", DWM 4288, August 2023[September 2019];

(j) "UST Payment Waiver", DWM 4289, September 2019;

(k) "UST Reconsideration Request", DWM 4290, September

2019;

(l) "UST Re-Evaluation of a Reimbursable Amount", DWM 4291, August 2023[September 2019];

(m) "UST Third-Party Claim", DWM 4292, September 2019; and

(n) "UST PSTEAF Reimbursement Rates", August 2023[May 2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 15, 2023

FILED WITH LRC: August 15, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 25, 2023, at 10:00 a.m. Eastern Standard Time. The public hearing can be accessed at the following Web site address:

<https://us02web.zoom.us/j/85955982939?pwd=amxLUFF0UndjTS9mVFcrbFJGQW10QT09> or can be accessed toll free by telephone: 888-475-4499 using Meeting ID code: 859 5598 2939 and Passcode 536933. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Louanna.Aldridge@ky.gov or mail this information to Louanna Aldridge, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 42:250" as the subject line, and state in the body of the message if you plan to speak during the hearing. 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 October 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: Louanna Aldridge, Environmental Scientist Consultant, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-0863, fax (502) 564-4245, email Louanna.Aldridge@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking. The Underground Storage Tank Program is necessary to remediate and restore affected facilities, which results in opportunities for economic development at prime real estate locations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law

administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to administer PSTEAF as required by KRS 224.60-130(1)(a) through (e) and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(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 existing administrative regulation to increase the rates for reimbursement to owners and operators for eligible corrective action. In addition, this amendment amends the re-evaluation process for costs that cannot be completed for the established rates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to the rising costs for corrective action work over the last few years. Reimbursement costs to owners and operators needed to be increased to meet the current rates for corrective action. This amendment will stimulate more activity and remediation as the reimbursement rates will be in line with current costs. In addition, the re-evaluation process required amendment as the current process was unable to address certain costs that cannot be completed for the established rates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the PSTEAF. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes procedures to administer the PSTEAF as required by KRS 224.60-130(1)(a) through (e), and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(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 owners and operators of underground storage tank eligible companies that contract with those owners or operators, certified laboratories that process samples collected at underground storage tank facilities, and certified tank installers/removers. There are 3,096 underground storage tank facilities, 61 eligible companies that contract with those owners or operators, and 38 certified laboratories that process samples collected at underground storage tank facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to submit the new forms incorporated in this amendment for reimbursement, as well as use the new increased rates for reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corrective action from the release of an underground storage tank would be reimbursed up to \$1 Million. The benefits to owners and operators also include compliance with both the federal and state regulations.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fee registrations, PSTEAF, and grants from the U.S. Environmental Protection Agency.

(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, but does establish administrative procedures for the entry level established in KRS 224.60-120(1) for owner or operators that are reimbursed from PSTEAF.

(9) TIERING: Is tiering applied? Yes. The entry level for petroleum storage tank owners is based on the number of tanks owned pursuant to KRS 224.60-120(1) and ranges from \$500 to \$12,500.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280, Subpart H.

2. State compliance standards. KRS 224.60-130(1)(a) through (e), 224.60-120(6).

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280, Subpart H.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this regulation is not more stringent than the federal requirements, however, currently this administrative regulation imposes additional or different requirements as required by statute, than those required by the federal rule. The state administered PSTEAF may be used to satisfy financial responsibility required by the federal regulation. Entities will have to comply with the procedures of this administrative regulation as they relate to reimbursement, third-party claims, financial audits, eligible companies and partnerships, and laboratory certification as required by KRS 224.60-120, 224.60-130, 224.60-135, 224.60-140, and 224.60-150.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory 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? This administrative regulation will impact state or local governments that own or operate an underground storage tank facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e), and 40 C.F.R. 280, Subpart H.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect. With the increased reimbursement costs, the UST program will cost approximately \$33.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs. In addition the PSTEAF must maintain a balance to satisfy obligations and expenses necessary to operate each account and maintain an appropriate reserve (\$1,000,000 minimum) in the Financial Responsibility Account. Currently, the UST Program has obligated \$13,084,036 in UST capital project sites and \$12,147,944 in UST corrective action, which are guarantees of payment pursuant to KRS 224.60-140 for corrective action under contract with a petroleum storage tank owner or operator.

(d) How much will it cost to administer this program for subsequent years? The UST program will cost approximately \$33.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs to administer the program for subsequent years. In addition the PSTEAF must maintain a balance to satisfy obligations and expenses necessary to operate each account and maintain an appropriate reserve (\$1,000,000 minimum) in the Financial Responsibility Account. Currently, the UST Program has obligated \$13,084,036 in UST capital project sites and \$12,147,944 in UST corrective action, which are guarantees of payment pursuant to KRS 224.60-140 for corrective action under contract with a petroleum storage tank owner or operator.

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

Revenues (+/-): UST Program revenues include: \$1,639,000 (biennially) in federal grant funding (LUST Prevention and LUST Cleanup), \$279,000 tank fees (annually), \$38.7 Million PSTEAF. PSTEAF consists of (\$0.014) per gallon of gasoline and special fuels received in the state pursuant to KRS 224.60-145. PSTEAF, in accordance with KRS 224.60-140, and each account established within, is maintained as a separate interest-bearing account intended to accumulate and accrue a reserve to cover the obligations as a guarantee of payment. In accordance with KRS 224.60-145, any surplus shall be transferred to a restricted fund and retained.

Expenditures (+/-): UST Program expenditures are approximately \$33.5 Million as whole, including reimbursement to owners and operators for eligible corrective action costs. In addition the PSTEAF must maintain a balance to satisfy obligations and expenses necessary to operate each account and maintain an appropriate reserve (\$1,000,000 minimum) in the Financial Responsibility Account. Currently, the UST Program has obligated \$13,084,036 in UST capital project sites and \$12,147,944 in UST corrective action, which are guarantees of payment pursuant to KRS 224.60-140 for corrective action under contract with a petroleum storage tank owner or operator.

Other Explanation: There is no other explanation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There is no known cost to the regulated entities in subsequent years.

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

Cost Savings (+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation amendment increases reimbursement rates to cover the costs of current corrective action costs. Due to the rise in costs over the last few years, current reimbursement rates do not suffice.

(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 proposed administrative regulation will not have a major economic impact.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(c) requires the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district to submit a plan and report which describes[describing] its educational initiatives that have technology components and their unmet technology need. KRS 157.655 authorizes a local public school district to participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the Kentucky Board of Education. Based on review of the unmet technology need, it has been determined that full implementation of the Kentucky Education Technology System (KETS) cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. This administrative regulation establishes the requirements governing the use of local monies to reduce unmet technology need to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions. (1) "Department" means the Kentucky Department of Education.

(2) "District education technology plan" means the plan developed by the local school district to address the unmet technology need of the district.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system established in the technology master plan issued by the Kentucky Board of Education and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System approved by the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved district

education technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the education technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process in accordance with the master plan.

Section 3. Reducing Unmet Need. (1) In categories of unmet technology need, as established in the 2024-2030[~~2018-2024~~] KETS Master Plan, a district shall limit procurements to those that will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) The department shall assist districts in selecting equipment, software, and services which[~~that~~] will reduce the unmet technology need.

Section 4. Alternative Technology. For technology components having no established KETS standards, a local school district may propose alternative technologies (waivers) in the local district education technology plan, particularly if the technology is proposed to achieve innovation. The department shall respond to the waiver within a three (3) week time period. If denied, the local school district may appeal to the Commissioner of Education.

Section 5. Incorporation by Reference. (1) The 2024-2030[~~2018-2024~~] KETS Master Plan, dated August 2023[~~February 2018~~], is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office of Education Technology, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. This material may be viewed at: <https://education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>. This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

SHARON ROBINSON, Chairperson

APPROVED BY AGENCY: August 7, 2023

FILED WITH LRC: August 8, 2023 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 31, 2023 at 10am in the State Board Room, 5th Floor, Kentucky Department of Education, 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 until October 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 G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160(1)(c) requires the Kentucky Board of

Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools. This administrative regulation specifies when KETS standards for unmet need have been established and full implementation of KETS cannot be funded solely on offers of assistance, then any local public school district technology procurements will reduce the unmet need regardless of the funding source. This regulation also incorporates by reference the 2024-2030 KETS Master Plan for Education Technology.

(b) The necessity of this administrative regulation: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. This administrative regulation was necessary to implement provisions of KRS 156.160, KRS 156.670, KRS 157.655.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides for specifics for the acquisition and use of educational equipment for the schools as required by KRS 156.160; incorporates the master plan as described in KRS 156.670; and stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in KRS 157.655.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the use of local monies to reduce unmet technology need and incorporates the KETS Master Plan by reference.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the new 2024-2030 KETS Master Plan by reference and removes the reference to the 2018-2024 KETS Master Plan.

(b) The necessity of the amendment to this administrative regulation: The KETS Master Plan for Education Technology has been updated per KRS 156.670 and the regulation needs to be amended to reflect the latest version.

(c) How the amendment conforms to the content of the authorizing statute: This amendment incorporates the updated 2024-2030 KETS Master Plan. KRS 156.670 requires the plan to be updated.

(d) How the amendment will assist in the effective administration of the statutes: The updated KETS Master Plan for Education Technology establishes the roadmap for technology use and procurement for local public school districts for the next six (6) years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local public school districts and KDE.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional action by local public school districts or KDE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment should not result in any additional cost to public school districts. The Kentucky Department of Education will be impacted by staff time to provide guidance and support.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendment of this regulation provides the current KETS Master Plan as a document incorporated by reference.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation. The Kentucky Department of Education will provide

ongoing programmatic support.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of local, state and federal funds are leveraged.

(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 amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

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? Local education agencies and the Kentucky Department of Education will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.160

(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? Minimal staff time at the Kentucky Department of Education will be required to implement this regulation. No additional costs are expected as a result of the amended administrative regulation. The Kentucky Department of Education will provide ongoing programmatic support as outlined in the document incorporated by reference.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement this regulation. No additional costs are expected on an ongoing basis as a result of the amended administrative regulation. The Kentucky Department of Education will provide ongoing programmatic support as outlined in the document incorporated by reference.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? 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? No additional expenses are expected as a result of this amended administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? No additional ongoing expenses are expected as a result of this amended 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Based on the assessment of the agency, this regulation alone will not have a major economic impact on state or local regulated entities. The primary purpose is to ensure Kentucky K-12 education technology enhances the learning experience of students, help prepare students for higher education and further develop a competitive workforce.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

702 KAR 7:125. Pupil attendance.

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

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

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

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

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

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

(a) A parent;

(b) A legal guardian; or

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

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

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

(b) The pupil is a participant in an activity as provided in either

KRS 158.240 or 159.035;

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

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

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

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

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

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

(i) The pupil is enrolled and participating in a full-time, online, virtual and remote learning program pursuant to the requirements of 704 KAR 3:535. A pupil shall be counted in attendance pursuant to the requirements of 704 KAR 3:535.

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

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

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

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes. (1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

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

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

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

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

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school

and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

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

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

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

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

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

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

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

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

(d) If ~~[a pupil is recommended by]~~ the local board of education determines the pupil is eligible for accelerated placement into the entry or second level of the primary program, the district shall ~~document[forward that] the determination[recommendation to the department for approval]~~ with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports.

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

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

Section 8. Nonresident Pupils. (1) The district of attendance shall provide a list of all enrolled nonresident students to the district

of residence not later than November 1 of each school year.

(2) The district of attendance shall provide to the district of residence a list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(c) not later than November 1 of each school year.

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

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

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

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

- (a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(8); and

(b) Shall constitute certification that the low attendance was due to health and safety reasons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) W01 - A pupil transferred to another grade in the same

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

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

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

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

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

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

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

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

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

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

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

(21) W25 - A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Suspension. (1) For a pupil who has been

suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

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

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

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

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

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

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

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

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

Section 17. Incorporation by Reference.

(1) "Home/Hospital Program Form", July 2023~~[October 2019]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at <https://education.ky.gov/districts/enrol/Documents/HomeHospitalProgramForm.pdf>.

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

JASON E. GLASS, Ed.D., Commissioner

SHARON ROBINSON, Chairperson

APPROVED BY AGENCY: August 7, 2023

FILED WITH LRC: August 8, 2023 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2023 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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 G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th

Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation is an amendment to 702 KAR 7:125, Pupil attendance.

(b) The necessity of this administrative regulation: The proposed regulatory amendment is necessary to streamline the early enrollment process for eligible students and lessen the administrative burden on local school districts pursuant to KRS 158.031. Additionally, "The Home/Hospital Program Form" July 2023, is incorporated by reference. It is a one page form for the recording of attendance for students receiving home or hospital instruction pursuant to KRS 158.033 and 702 KAR 7:150. The changes to the "The Home/Hospital Program Form", October 2019, only impact the layout to make the form more user friendly. There are no substantive changes.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 158.031 requires the Kentucky Board of Education (KBE) to establish a process for the early entry of students into the primary program. KRS 158.033 requires the KBE to promulgate administrative regulations establishing the components of home or hospital instruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation will lessen the administrative burden on school districts by removing an unnecessary approval layer while maintaining the statutorily mandated process for the early entrance and advancement of students into the primary program. In addition, the amendment to the document incorporated by reference will make the form easier for districts to use to record student attendance. Student attendance in the home/hospital program is necessary for school district funding.

(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 proposed amendment streamlines the process for approving a student for early entry into and advancement in the primary program. Under the current regulation, the district makes the determination whether a student has attained an appropriate level of academic, social and development progress that supports an accelerated placement. That determination is subject to review and approval by the Kentucky Department of Education (KDE). The proposed amendment removes the KDE from the approval process. Districts will still follow the same process laid out in the existing regulation and continue to document the sources used and the determination made. KDE will review early age entrance eligibility determinations as part of school district attendance audits. The amendment additionally makes changes to the "The Home/Hospital Program Form" incorporated by reference. It is a one page form for the recording of attendance for students receiving home or hospital instruction pursuant to KRS 158.033 and 702 KAR 7:150. The changes to the "The Home/Hospital Program Form", October 2019, only impact the layout to make the form more user friendly. There are no substantive changes. Home/hospital program attendance impacts school district funding.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove an unnecessary and duplicative approval process that will lessen the administrative burden on local school districts. The amendment to the "Home/Hospital Program Form" will make the form more user friendly for school districts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 158.031 requires the KBE to establish a process for the early entry of students into the primary program. The proposed regulation amends that process to remove KDE from the approval process while maintaining the overall process but lessening the administrative burden on school districts.

KRS 158.033 requires the KBE to promulgate administrative

regulations establishing the components of home or hospital instruction.

(d) How the amendment will assist in the effective administration of the statutes: KDE has determined that the regulatory requirement that the department approve a district's determination that enrollment of an underage student into or advancement in the primary program is not necessary. Rather, districts will follow the same process in deciding whether early enrollment is appropriate for a student. KDE will review those determinations during attendance audits. In addition, changes to the "Home/Hospital Program Form" are only cosmetic but will make the form easier to use for school districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts and the Kentucky Department of Education.

(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: School districts will no longer have to get KDE approval when a district determines an underage student is eligible for enrollment into or advancement in the primary education 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 expected additional cost to school districts or KDE in implementing this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will no longer have to obtain KDE approval when the district determines an underage student is suitable for enrollment into or advancement in the primary education program. This will lessen the administrative burden on the district while maintaining the appropriate level of scrutiny of such decisions.

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

(a) Initially: Costs are expected to be minimal.

(b) On a continuing basis: Ongoing costs are expected to be minimal.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or indirectly impacted.

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation applies uniformly to all school districts.

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? Local school districts and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendment is limited to the section 6 of the administrative regulation related to the enrollment of underage students into or advancement in the primary education program per KRS 158.031.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? The proposed amendment is not expected to 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? The proposed amendment is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Unknown. The proposed amendment seeks to remove an approval step from an existing process. All other aspects of the process will remain the same.

(d) How much will it cost to administer this program for subsequent years? Unknown. The proposed amendment seeks to remove an approval step from an existing process. All other aspects of the process will remain the same.

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 proposed amendment seeks to lessen the administrative burden on school districts in removing the required approval by KDE for the early entrance or advancement of underage students in the primary education program. The amount of savings across school districts due to the reduced administrative burden is unknown.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The amount of savings across school districts is unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The amount of savings across school districts is unknown.

(c) How much will it cost the regulated entities for the first year? No new costs are expected.

(d) How much will it cost the regulated entities for subsequent years? No new costs are 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: The proposed amendment seeks to lessen the administrative burden on school districts in removing the required approval by KDE for the early entrance or advancement of underage students in the primary education program. The amount of savings across school districts due to the reduced administrative burden is unknown.

(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 is not expected to have a major economic impact to the department or to local school districts.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Division of Child Support
(Amendment)

921 KAR 1:420. Child support distribution.

RELATES TO: KRS 13B.010(2), 13B.170, 205.720, 205.750, 205.755, 205.795, 405.520, 407.5101, 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5), 42 U.S.C. 651

STATUTORY AUTHORITY: KRS 194A.050(1), 205.755(1), 205.795

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.755(1) authorizes the secretary to prescribe the manner in which distributions of payments of support shall be made, consistent with state and federal law and administrative regulations. This administrative regulation establishes procedures for distribution of child support payments.

Section 1. Allocation of income withheld payments in IV-D and non-IV-D cases.

(1) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

(a) Totaling the obligor's current support obligations subject to income withholding;

(b) Dividing each current support obligation by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the withheld payment received from the employer by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(2) The cabinet shall allocate the payment amount determined in subsection (1)(c) of this section to each of the obligor's current support obligation amounts subject to income withholding.

(3) If the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withholding amount among the obligor's ordered arrears obligations subject to income withholding by:

(a) Totaling the obligor's ordered arrears obligations subject to income withholding;

(b) Dividing the monthly arrears obligation for each child support case by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the remaining income withholding amount by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each arrears obligation subject to income withholding.

(4) The cabinet shall allocate the payment amount determined in subsection (3)(c) of this section to each of the obligor's arrears obligations subject to income withholding.

(5) If the obligor's current support and arrears obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withheld amount proportionately according to subsections (1) through (4) of this section.

(6) Allocation of nonwage payments in IV-D and non-IV-D cases. The cabinet shall allocate nonwage payments:

(a) As designated by an obligor for a specific case; or

(b) If not designated by an obligor, by allocating a proportionate share to each of the obligor's child support cases, as determined in subsections (1) through (4) of this section.

Section 2. K-TAP and Kinship Care Accounts Distribution.

~~[(4)]~~ A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

~~(1)[(a)]~~ Payable to the Department for Income Support, Child Support Enforcement, and

~~(b)~~ Reported to the K-TAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

~~(2)~~ Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance payments and report the result to the child support agency.]

~~(2)[(a)]~~ If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:

~~(a)[1-]~~ Distribute to the family at the end of the month the amount of child support collected; and

~~(b)[2-]~~ Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 1(4)(b).

~~(3)[(b)]~~ Unless a hearing is requested or a case remains eligible

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for assistance, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

- (1) Payable to the Department for Income Support, Child Support Enforcement; and
- (2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts.

(1) A tax refund intercepted in a public assistance account shall be:

(a) Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or

2. Held by the cabinet for six (6) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearage; or

(b) If no assigned arrearage remains:

1. Held by the cabinet for six (6) months, if a joint income tax return is filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) Within fifteen (15) calendar days of the date of resolution of an obligor's appeal contesting the accuracy of a past-due arrears, the cabinet shall forward the ordered amount to:

(a) The obligor, if resolution is in the obligor's favor; or

(b) The agency or family, if resolution is against the obligor.

Section 5. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 6. Treatment of Escrow and Excess Payments.

(1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid;

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family; and

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Return of Overpayment.

(1) If a child support overpayment is found to be due to the noncustodial parent, the amount shall be verified and, if legitimate, approved by the Department for Income Support, Child Support Enforcement, Processing and Distribution Branch.

(2) Upon approval by the Processing and Distribution Branch, a check writer shall be sent to the Department of Treasury for processing.

(3) A check for the approved amount of child support overpayment shall be issued to the noncustodial parent within one (1) to seven (7) days, unless the overpayment is due to a tax return. If the overpayment is due to a tax return, the approved amount shall be issued to the noncustodial parent:

(a) Within thirty (30) days if a single return; or

(b) Within six (6) months, if a joint return, from the date of the notification of federal tax offset or until notified that the unobligated

spouse's share of the refund has been paid, whichever is earlier, in accordance with 45 C.F.R. 303.72(h)(5).921 KAR 1:420

STEVEN P. VENNO, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 9, 2023

FILED WITH LRC: August 14, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 23, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 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, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the distribution of child support.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to de-implement the requirement to report to the KTAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient, as child support income is no longer countable for KTAP, Kinship Care and FAST programs in accordance with 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5), and 42 U.S.C. 651.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.755(1) authorizes the secretary to prescribe the manner in which distributions of payments of support shall be made, consistent with state and federal law and administrative regulations. This administrative regulation establishes procedures for distribution of child support payments.

(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 194A.050(1), 205.755(1), and 205.795.

(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 no longer require the child support agency to report to the KTAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is

necessary to de-implement the requirement to report to the KTAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient, as child support income is no longer countable for KTAP, Kinship Care and FAST programs in accordance with 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5), and 42 U.S.C. 651.

(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 KTAP or Kinship Care agency in determining ongoing eligibility for KTAP, Kinship Care and FAST programs in conforming with in accordance with 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5), and 42 U.S.C. 651. This amendment also identifies KRS 194A.050(1), 205.755(1), and 205.795 as the laws governing the distribution of child support.

(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 no longer requiring the child support agency to report to the KTAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Child Support Enforcement attorneys and staff - 657; Division of Family Support attorneys and staff - 1915; Participants in the Child Support Program - 503,000; Participants in the KTAP, Kinship Care and FAST programs - 21,241

(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 Support Enforcement - will no longer be required to report to the KTAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient Division of Family Support - will no longer include escrow payment in determining ongoing eligibility for KTAP, Kinship Care and FAST programs Participants in the Child Support Program - escrow payments will no longer be a factor in determining ongoing eligibility for KTAP, Kinship Care and FAST programs Participants in the KTAP, Kinship Care and FAST programs - escrow payments will no longer be a factor in determining ongoing eligibility for KTAP, Kinship Care and FAST programs

(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

(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 be implemented with no allocated funds.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. Once updated on the Child Support Enforcement internal program (KASES), no additional costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, 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 administrative 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 which elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5)

(2) State compliance standards. KRS 194A.050(1), 205.755(1), 205.795, KRS 13B.010(2), 13B.170, 205.720, 205.750, 205.755, 205.795, 405.520, 407.5101

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 651.

(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, more specifically, the Department for Income Support, Child Support Enforcement Program and Division of Family Support 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. 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5) KRS 194A.050(1), 205.755(1), 205.795, KRS 13B.010(2), 13B.170, 205.720, 205.750, 205.755, 205.795, 405.520, 407.5101 42 U.S.C. 651

(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 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 in 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.

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*.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 3:340. Approval of school district lease agreements.

RELATES TO: KRS 45.570, Chapter 45A, 65.944, 65.946, 156.070, 160.160, 424.260, Ky. Const. Sec.177

STATUTORY AUTHORITY: KRS 65.944(1)(b), 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 and 156.070 require the Kentucky Board of Education to promulgate administrative regulations concerning the management of the school districts. KRS 65.944(1)(b) requires the Kentucky Board of Education to promulgate administrative regulations to implement requirements for lease approval by the Commissioner of Education. This administrative regulation establishes requirements for approval of school district lease agreements.

Section 1. Administrative Guidelines.

(1) To request approval of a lease agreement in excess of \$100,000 from the Commissioner of Education pursuant to KRS 65.944(1)(b), the district shall submit a copy of the proposed lease and a completed Local Board Attorney Certification form to the Department of Education prior to finalization of the lease agreement.

(2) The school district shall submit the proposed lease to the Department of Education who shall approve or disapprove the lease within thirty (30) business days.

(3) During the evaluation process, the Department of Education may request additional documentation to properly evaluate the proposed lease agreement.

Section 2. Final Approval and Reconsideration.

(1) Final approval of a proposed school district lease agreement in excess of \$100,000 shall be granted by the Commissioner of Education before the agreement takes effect.

(2) Upon receiving written approval from the Commissioner of Education, a school district may enter into the lease.

(3)(a) The Commissioner of Education shall send written notification to the school district if the agreement is not approved.

(b) The notice shall contain the reasons the agreement was not approved.

(c) A school district may request reconsideration by the Commissioner of Education if alterations are made to the proposed lease which alleviate the concerns expressed by the Commissioner of Education.

Section 3. Incorporation by Reference.

(1) "Local Board Attorney Certification", August 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material may be viewed at: <https://education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

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

JASON E. GLASS, Ed.D., Commissioner
SHARON ROBINSON, Chairperson

APPROVED BY AGENCY: August 7, 2023

FILED WITH LRC: August 8, 2023 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 31, 2023 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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 G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed administrative regulation creates an approval process for school district leases in excess of one hundred thousand dollars (\$100,000) as required pursuant to KRS 65.944(1)(b).

(b) The necessity of this administrative regulation: KRS 65.944(1)(b) requires the Kentucky Board of Education to promulgate an administrative regulation establishing an approval process by the Commissioner of Education for school districts leases that exceed one hundred thousand dollars (\$100,000).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed administrative regulation is required pursuant to KRS 65.944(1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation creates an approval process for local school district leases that exceed one hundred thousand dollars (\$100,000).

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts.

(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: School districts will have their legal counsel complete the incorporated "Local Board Attorney Certification" form certifying that the lease complies with applicable laws and submit the form and lease to the Commissioner of Education for approval. The Commissioner will approve or deny the

lease. If the lease is denied, then the Commissioner must provide the reasons and the district may correct any defects in the lease and/or request reconsideration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed lease approval process should have minimal cost to the school district as the district should already have legal counsel involved in the review of leases in excess of one hundred thousand dollars (\$100,000). Completion of the "Local Board Attorney Certification" form will help the district save money by ensuring that the lease contains all the legally required terms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed regulation will ensure that districts have legal counsel review and certify that the agreement meets legal requirements for leases that exceed one hundred thousand dollars (\$100,000). This should ensure that district leases are compliant with applicable law.

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

(a) Initially: It is believed that there will be minimal costs to school districts to implement.

(b) On a continuing basis: District costs for legal review and certification of a lease will depend on the number of districts leases in excess of one hundred thousand dollars (\$100,000).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: School district general funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The proposed regulation is uniformly applicable to all school districts.

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? School districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The proposed regulation is required by KRS 65.944(1)(b) and authorized by KRS 156.070 and 156.160

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation establishes a school district lease approval process. It 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? The proposed administrative regulation establishes a school district lease approval process. It will not generate revenue.

(c) How much will it cost to administer this program for the first year? It is expected that districts will incur some unknown additional costs. The proposed regulation requires district legal counsel to certify leases exceeding one hundred thousand dollars comply with legal requirements. Many districts already involve legal counsel in the preparation and review of leases. For such districts, the proposed administrative regulation should only minimally impact costs.

(d) How much will it cost to administer this program for subsequent years? Unknown. Districts will incur some cost related to legal review of leases exceeding one hundred thousand dollars (\$100,000). Costs will depend on the number of leases and legal counsel 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? Unknown. The proposed regulation centralizes the approval process for school district leases in excess of one hundred thousand dollars (\$100,000). The "Local Board Attorney Certification" form incorporated by reference ensures that submitted leases are compliant with Kentucky law. The review and certification by local board counsel should ensure district leases are approvable by the Commissioner of Education as required by KRS 65.944 thereby avoiding unnecessary delay in entering into the lease which may have some economic benefit to the district.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown. The proposed regulation centralizes the approval process for school district leases in excess of one hundred thousand dollars (\$100,000). The "Local Board Attorney Certification" form incorporated by reference ensures that submitted leases are compliant with Kentucky law. The review and certification by local board counsel should ensure district leases are approvable by the Commissioner of Education as required by KRS 65.944 thereby avoiding unnecessary delay in entering into the lease which may have some economic benefit to the district.

(c) How much will it cost the regulated entities for the first year? Unknown. Districts will incur the cost of legal review and certification of all leases above one hundred thousand dollars (\$100,000). However, this review will ensure that leases above the one hundred thousand dollar (\$100,000) threshold are compliant with Kentucky law which may reduce legal costs in the future.

(d) How much will it cost the regulated entities for subsequent years? Unknown. Districts will incur the cost of legal review and certification of all leases above one hundred thousand dollars (\$100,000). However, this review will ensure that leases above the one hundred thousand dollar (\$100,000) threshold are compliant with Kentucky law which may reduce legal costs in the future.

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 proposed regulation is not expected to have a major economic impact on the department or local school districts.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Behavioral Health (New Administrative Regulation)

908 KAR 2:300. Kentucky problem gambling assistance account.

RELATES TO: KRS 194A.005(1), (3), KRS Chapter 210, KRS 210.410(2), 211.185, 309.080(2), 309.130(2), 311.571, 311.840 to 311.862, 314.042, 319.050, 319.056, 319.064, 319C.010(6), 335.080, 335.100, 335.300, 335.500,

STATUTORY AUTHORITY: KRS 230.826

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.826 requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to establish criteria for the expenditure of funds from the Kentucky problem gambling assistance account to provide support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families experiencing difficulty as a result of problem gambling, or substance use disorder. These funds may also be used to promote public awareness and assistance of education and programs to reduce the consequences of problem gambling and pay for the costs and expenses associated with treatment of and recovery from problem gambling. This administrative regulation establishes the standards for the types of agencies, groups, organizations, and persons eligible to receive funding, types of eligible activities, required documentation, and the development of performance measures and evidence of successful expenditures of awarded funds. KRS 230.826 also requires the establishment of procedures for the submission, evaluation, and review of applications for funding; the awarding of funds; and the cabinet's monitoring of fund expenditures.

Section 1. Definitions.

(1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by KRS 335.300;

(i) A licensed professional clinical counselor as defined by KRS 335.500;

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4);

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Registered behavior technician under the supervision of a licensed behavior analyst.

(3) "Behavioral Health Services Organization" or "BHSO" means a program licensed in accordance with 902 KAR 20:430.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Client" means an individual described by KRS 210.410(2).

(6) "Community mental health center" or "CMHC" or "center" means a program established pursuant to KRS Chapter 210.

(7) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. Eligibility. (1) The following organizations and individuals are eligible to apply for funding, to the extent funds are available, from the Kentucky problem gambling assistance account:

(a) A CMHC licensed in accordance with 902 KAR 20:091;

(b) A BHSO licensed in accordance with 902 KAR 20:430;

(c) A Behavioral health professional;

(d) A health department established pursuant to KRS 211.185; or

(e) A federally designated 501(c)3 organization.

(2) Applications for funding must be for at least one (1) of the following activities:

(a) Providing support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families who experience difficulty as a result of substance use disorder, or problem or compulsive gambling;

(b) Promoting public awareness of, and providing education about, problem gambling;

(c) Establishing and funding programs to certify problem gambling counselors; or

(d) Promoting public awareness of assistance programs for those experiencing consequences of problem gambling.

Section 3. Application for Funding. Entities that meet the eligibility requirements established in Section 2(1) of this administrative regulation shall submit a "Kentucky Gambling Assistance Application" with the required supporting documentation to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account:

(1) In writing to 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(2) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 4. Monitoring. Recipients of funds from the Kentucky problem gambling assistance account shall:

(1) Establish and conduct evaluation measures that assess the efficacy of services provided;

(2) Collect and report the following data:

(a) The number of individuals served;

(b) Types of services provided to individuals served; and

(c) Detailed costs for the number of individuals served and the services provided during the reporting period.

(3) Submit quarterly reports meeting the requirements established in this section of the administrative regulation:

(a) To the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account, 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(b) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 5. Treatment Professional Certification. (1) Qualified behavioral health providers seeking certification from a cabinet-approved, nationally or internationally recognized certifying organization shall:

(a) Have at a minimum a bachelor's degree or equivalent in a behavioral health field;

(b) Have current Kentucky licensure in substance use disorder counseling, or mental health counseling or equivalent work experience;

(c) Complete fifteen (15) hours of training on problematic and disordered gaming prevention, assessment, and co-occurring issues for individuals and families by an approved trainer;

(d) Complete fifty (50) direct contact hours addressing the issues, prevention and early intervention, co-occurring and when to refer for individuals and families with a gaming disorder;

(e) Complete a minimum of four (4) consultation hours with an approved consultant from the certifying organizations board;

- (f) Complete all application materials, ethical statement, and directory authorization forms required by the certifying organization;
- (g) Pass any examination required by the cabinet-approved certifying organization; and
- (h) Pay fees associated for the completion of certification to the certifying organization.

(2) To the extent funds are available, individuals may apply for reimbursement for any fees paid after successful completion of certification from a cabinet-approved certifying organization by submitting an application to the department for reimbursement.

Section 6. Department Responsibilities. The department shall publish on the department Web site:

- (1) Certified treatment providers for individuals experiencing the consequences of problem gambling; and
- (2) Problem gambling treatment and recovery services and resources.

Section 7. Incorporation by Reference. (1) "Kentucky Gambling Assistance Application", 07/23, 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 departments Web site at <https://www.chfs.ky.gov/agencies/dbhdd/Pages/default.aspx>.

KATHERINE R. MARKS, Ph. D., Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 31, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 23, 2023 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 October 16, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 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: Rachael Ratliff and Krista Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 230.285 establishing the standards and requirements for the administration of the Kentucky problem gambling assistance fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS. 230.826 by establishing the standards and requirements for the administration of the Kentucky problem gambling assistance 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: 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: According to the Kentucky Council on Problem Gambling, over 100,000 Kentucky adults exhibit problem gambling traits, and more than 45,000 Kentucky adults struggle with addiction to gambling. Currently, there are seven practicing mental health professionals certified to treat gambling disorder 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 regulated entities will need to meet the criteria established in the statute and submit the required application and supporting documentation for an opportunity to receive funding.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with the application for funding opportunities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will experience certification and an increased opportunity for funding for programming designed to address and treat behaviors associated with problem gambling.

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

(a) Initially: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(b) On a continuing basis: The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented with funds from the Kentucky problem gambling assistance account and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation may result in an increased need for funding dependent upon the request from the impacted entities. This impact is unknown at this time.

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

(9) TIERING: Is tiering applied? Tiering is not applied 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 Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2023 Ky. Acts ch.147, sec. 2.

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

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

(c) How much will it cost to administer this program for the first year? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

(d) How much will it cost to administer this program for subsequent years? The Department for Behavioral Health, Developmental, and Intellectual Disabilities has been allocated up to \$50,000 annually from the problem gambling assistance account for the administration of the fund and associated activities. This amount would provide for approximately .5 FTE costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation should not cost regulated entities in the first year for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation should not cost regulated entities in subsequent years for the provision of already established services. Any other related costs through the development of programming, certification, or services would be eligible for reimbursement through the Kentucky problem gambling assistance fund.

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 should not have a major economic impact.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 8, 2023

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 8, 2023 at 2:00 p.m. in Room 149 of the Capitol Annex. Representative Lewis, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Representative Derek Lewis, Co-Chair; Senator David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Nichols.

Guests: Cassie Trueblood, Education Professional Standards Board; Jamie Caldwell, Rosemary Holbrook, Robert Long, Jr.; Personnel Cabinet; Carrie Bass, Jessica Beaubien, Liza Welch, Kentucky Public Pensions Authority; Cordelia Harbut, Board of Architects; Kelly Jenkins, Board of Nursing; Sara Boswell Janes, Racheal Kuperus, D.C., Clay Patrick, Board of Chiropractic Examiners; Steven Curley, Board of Physical Therapy; Eddie Sloan, John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, Michael Scott, Department of Fish and Wildlife Resources; Nathan Goens, Steve Potts; Justice and Public Safety Cabinet; Amy Barker, Amelia Howell, Department of Corrections; Leah Boggs, Department of Juvenile Justice; Shaun Orme, Benjamin Seigel, Department of Insurance; Drew Conners, Jamie Eads. Dr. Bruce Howard, Horse Racing Commission; Molly Cassidy, Max Fuller, Rick Rand, Department of Housing, Buildings, and Construction; Adam Mather, Office of Inspector General; Wesley Duke, Lisa Lee, Jonathan Scott, Department for Medicaid Services; Scott Collins, Victoria Eldridge, Sarah Puttoff, Department for Aging and Independent Living; Joe Barnett, Laura Begin, Kelli Blair, Department for Community Based Services; Emily Beauregard, Melissa Newland, Cara Stewart, Kelly Taulbee, Kentucky Voices for Health, Tiffany Hays, Central Kentucky Cancer Care; Margaret Hill, University of Louisville School of Dentistry, Jeffery Okeson, University of Kentucky School of Dentistry, Pamela Stein, University of Pikeville – College of Dental Medicine; Molly Nichol Lewis, Kentucky Primary Care Association; Alicia Whatley, Kentucky Oral Health Coalition, Dr. Bill Collins and Carrie Collins, Redbird Clinic.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Alternative Routes to Certification

016 KAR 009:080E. University-based alternative certification program. Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 6 to clarify that the exception for the Exceptional Children or Interdisciplinary Early Childhood Education candidate only being able to renew two (2) times, only applies to a candidate who is employed in a public school for consistency with Senate Bill 49 from the 2023 Regular Session of the General Assembly and 34 C.F.R. 300.156(c)(2); and (2) to amend the RELATES TO paragraph and Sections 6 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

016 KAR 009:080. University-based alternative certification program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 6 to clarify that the exception for the Exceptional Children or Interdisciplinary Early Childhood Education candidate only being able to renew two (2) times, only applies to a candidate who is employed in a public school for consistency with Senate Bill 49 from the 2023 Regular Session of the General Assembly and 34 C.F.R. 300.156(c)(2); and (2) to amend the RELATES TO paragraph and Sections 6 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

016 KAR 009:100E. Alternative Route to Certification Program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to clarify that the exception for the Exceptional Children or Interdisciplinary Early Childhood Education candidate only being able to renew two (2) times, only applies to a candidate who is employed in a public school for consistency with Senate Bill 49 from the 2023 Regular Session of the General Assembly and 34 C.F.R. 300.156(c)(2); and (2) to amend Sections 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

016 KAR 009:100. Alternative Route to Certification Institute.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to clarify that the exception for the Exceptional Children or Interdisciplinary Early Childhood Education candidate only being able to renew two (2) times, only applies to a candidate who is employed in a public school for consistency with Senate Bill 49 from the 2023 Regular Session of the General Assembly and 34 C.F.R. 300.156(c)(2); and (2) to amend Sections 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 002:034. Classified compensation administrative regulations. Jamie Caldwell, assistant division director; Rosemary Holbrook, assistant general counsel; and Robert Long, Jr., general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 3, 9, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 002:095. Classified service general requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

Unclassified

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

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules

105 KAR 001:220. Periodic disability review. Carrie Bass, staff attorney supervisor; Jessica Beaubien, policy specialist; and Liza Welch, division director, represented the authority.

A motion was made and seconded to approve the following

amendments: (1) to amend Sections 1, 3 through 8, and 10 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the STATUTORY AUTHORITY paragraph and Section 2 to clarify the agency's authority. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Architects

201 KAR 019:225. Examinations required; general provisions. Cordelia Harbut, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, and 6 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 020:240. Fees for applications and service. Kelly Jenkins, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Chiropractic Examiners

201 KAR 021:025. Board; officers, duties, and compensation. Sara Boswell-Janes, staff attorney, and Rachael Kuperus, D.C., board member, represented the board.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 021:105. Telehealth chiropractic services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 022:045. Continued competency requirements and procedures. Stephen Curley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Emergency Medical Services

202 KAR 007:510. Air ambulance services. Eddie Sloan, executive director, and John Wood, counsel, represented the board.

In response to a question by Co-Chair Lewis, Mr. Sloan stated that Kentucky was experiencing a staffing shortage pertaining to air ambulance services. There were not enough paramedics for continuous operations statewide.

In response to a question by Senator Yates, Mr. Sloan stated that the board was working to address the staffing shortage by improving educational opportunities, recruitment, retention, and pay for paramedics.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4 through 7, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:555E. Ground agencies.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Water Patrol

301 KAR 006:001. Definitions for 301 KAR Chapter 6. Steven Fields, staff attorney; Jenny Gilbert, legislative liaison; and Michael Scott, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 006:020. Boating safety equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Administrative

301 KAR 011:020. Procurement of architectural and engineering services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to clarify department employee responsibilities. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigation Branch: Special Law Enforcement Officers

500 KAR 002:020. Filing and processing SLEO commissions. Nathan Goens, attorney, and Steve Potts, investigative agent supervisor, represented the branch.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3, 4, 7, 8, and 11 through 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Special Local Peace Officers

500 KAR 003:010. Definitions.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the STATUTORY AUTHORITY paragraph, and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

500 KAR 003:020. Filing and processing SLPO commissions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Corrections: Office of the Secretary

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and procedures. Amy Barker, assistant general counsel; Leah Boggs, general counsel; and Amelia Howell, program administrator, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) align provisions with other departmental policies; (2) clarify procedures; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare

505 KAR 001:200E. Cell entry teams, emergency response teams, and emergency response training.

In response to a question by Co-Chair Lewis, Ms. Boggs stated that the three (3) emergency administrative regulations for consideration by the subcommittee implemented specific provisions of Senate Bill 162 from the 2023 Regular Session of the General Assembly, which established a return to a regional model. The department, along with the Kentucky Department for Public Advocacy, was in the process of developing a plan to transition to the regional model, and the plan would be presented to the General Assembly once it was ready. Nothing in these administrative regulations would prohibit the transition to a regional model once the department was ready.

In response to questions by Senator Yates, Ms. Boggs stated that the department had begun working on oversight and training, including regarding juveniles with disabilities. Developing these protocols was a high priority for the agency.

505 KAR 001:200. Cell entry teams, emergency response teams, and emergency response training.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 3 to require the training to include how to interact with juveniles with mental or physical disabilities. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 001:210E. Restraints and control methods.

In response to questions by Co-Chair Lewis, Ms. Boggs stated that authorized force-related equipment was established in Section 1 of this administrative regulation. Incident reports were typically completed by one (1) individual, with statements from each staff person involved. Often, there was video pertaining to the incident, and a medical statement might be part of the incident report, if applicable.

505 KAR 001:220E. Transportation of juveniles.

505 KAR 001:230. Facility, capacity, staffing, and population count.

A motion was made and seconded to approve the following amendment: to amend Section 3 to specify the types of information that a facility may be required to report about its juvenile population. Without objection, and with agreement of the agency, the amendment was approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:570E. Minimum standards for Medicare supplement insurance policies and certifications. Shawn Orme, executive director, and Benjamin Seigel, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 6, 7, 10, 11, 13, 14, 16, and 27 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: Horse Racing Commission: Flat and Steeplechase Racing

810 KAR 004:090. Owners. Drew Conners, division director; Jamie Eads, executive director; and Dr. Bruce Howard, equine medical director, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 5, 7, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Incentive and Development Funds

810 KAR 007:030. Kentucky Thoroughbred Development Fund.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 007:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.

In response to a question by Representative Bridges, Mr. Conners stated that the equitable basis for funding involved allocating funds from each track, based on from where the funds were derived, and using those monies to fund purses. Percentages were determined by the advisory committee, as approved by the commission.

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.

Medication Guidelines

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

Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Elevator Safety

815 KAR 004:030. Elevator licensing. Molly Cassady, general counsel; Max Fuller, deputy commissioner; and Rick Rand, commissioner, represented the division.

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 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Building Code

815 KAR 007:130. Kentucky Industrialized Building Systems.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 5, and 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.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

Standards of Safety

815 KAR 010:060. Standards of Safety.

A motion was made and seconded to approve the following amendments: to amend Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Plumbing

815 KAR 020:030. Plumbing licenses.

Manufactured Homes and Recreational Vehicles

815 KAR 025:020. Recreational vehicles.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 025:060. Licensing and certifications with manufactured homes and mobile homes.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Electrical

815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3, 6, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Essential Personal Care Visitor Program

900 KAR 014:010. Essential personal care visitor programs; visitation guidelines. Adam Mather, inspector general, represented the office.

Health Services and Facilities

902 KAR 020:018. Operation and services; End Stage Renal Disease (ESRD) facilities.

Controlled Substances

902 KAR 055:015. Schedules of controlled substances.

Division of Health Care: Health Care

906 KAR 001:210. Health care services agencies.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services

907 KAR 001:038E. Hearing Program coverage and requirements. Wes Duke, general counsel; Lisa Lee, commissioner; and Jonathan Scott, regulation coordinator, represented the department. Emily Beauregard, executive director, Kentucky Voices for Health; Dr. Bill Collins, DMD, Redbird Mission and Redbird Clinic; Carrie Collins, Redbird Mission and Redbird Clinic; Tiffany Hays, oncology social worker; Dr. Margaret Hill, interim dean, University of Louisville School of Dentistry; Molly Lewis, chief executive officer, Kentucky Primary Care Association; Melissa Newland, caregiver and Medicaid recipient; Dr. Jeff Okeson, professor and dean, University of Kentucky School of Dentistry; Dr. Pamela Sparks Stein, professor and dean, University of Pikeville College of Dental Medicine; Cara Stewart, director of policy advocacy, Kentucky Voices for Health; and Alicia Whatley, policy and advocacy director, Kentucky Oral Health Coalition, appeared in support of 907 KAR 1:038E, 1:126E, and 1:632E.

In response to a question by Co-Chair Lewis, Ms. Beauregard stated that Kentucky Voices for Health supported 907 KAR 1:038E, 1:126E, and 1:632E. Kentucky was safer and had a better workforce with these provisions. Medicaid providers needed assurance of adequate reimbursement, access to participating providers needed improvement, and procedures and processes needed to be

streamlined. Managed Care Organizations (MCOs) were allowed to pay reimbursement rates well below the fee schedules; however, if access did not meet statutory requirements, perhaps those lower rates should be reconsidered. This expansion would provide a good return on investment from a health and financial standpoint.

In response to a question by Co-Chair Lewis, Ms. Stewart stated that Kentucky Voices for Health examined data that demonstrated that dental health significantly affected job opportunities. Survivors of domestic violence also needed dental care to heal both physically and emotionally from trauma. Corrective lenses were important for caregiving and driving safety. The department was unable to force MCOs to pay specific reimbursement rates. Networks needed to be effective and tested by the Department of Insurance the same way that private-pay networks were tested.

In response to a question by Co-Chair Lewis, Ms. Newland stated that, as a caregiver and Medicaid recipient, these administrative regulations were life changing. With many health and dental conditions, these services were vital for her. Ms. Newland worried about losing benefits.

In response to a question by Co-Chair Lewis, Ms. Hays stated that, as an oncology social worker, she worked in some of the most impoverished areas of Kentucky. Oral health was probably one of the most common co-morbidities with the cancer patients she treated and further complicated their care. There were also issues with treatment delays due to the shortage of participating providers. Some cancer treatment also created conditions regarding vision.

In response to a question by Co-Chair Lewis, Dr. Sparks Stein stated that the University of Pikeville College of Dental Medicine was concerned with patient access to dental care. Poor dental hygiene correlated with diabetes, heart attack risk, and stroke. Tooth extraction in lieu of root canal could cause other dental conditions that might cause a cascade of health problems. Those without teeth or dentures had difficulty finding employment, eating a healthy diet, and engaging socially. Kentucky had high rates of toothlessness, and many did not have the resources for dentures. Substance abuse disorder was sometimes related to medication to treat painful dental health conditions. Fifty-four (54) percent of Kentucky's children were insured through Medicaid, and many had unmet dental care needs.

In response to a question by Co-Chair Lewis, Dr. Hill stated that the University of Louisville School of Dentistry had treated more than 50,000 Medicaid patients in the past year. Because of a lack of Medicaid-participating providers, Kentucky's dental schools served as a safety net, and many patients would not be able to receive care were it not for these schools. Dental students typically left school with a lot of debt, which made serving the Medicaid community financially untenable. Dr. Hill asked the subcommittee to allow this program to continue and to make reimbursement rates more reasonable.

In response to a question by Co-Chair Lewis, Dr. Okeson stated that Medicaid dental providers were becoming difficult to access in Kentucky because of dwindling providers. Ninety-five (95) percent of the funding the University of Kentucky School of Dentistry received was used for dentistry education. Caring for Medicaid patients was threatening to affect educational funding. Reimbursement rates of thirty (30) percent were unsustainable. For the sake of Medicaid patients and for the quality of dentistry education, Dr. Okeson requested that this program of expansion continue and become permanent.

In response to a question by Co-Chair Lewis, Ms. Lewis stated that the Kentucky Primary Care Association was a significant provider that had provided care to over 1,000,000 unique clients last year. High quality, cost-effective care was important, and savings could be generated by helping patients get and maintain good health through taking care of the whole patient. Dental care wait lists were long, and access was limited. Kentucky Primary Care Association was dedicated to working with the General Assembly to find creative solutions to Kentucky's Medicaid health care concerns.

In response to a question by Co-Chair Lewis, Ms. Whatley stated that Kentucky Oral Health Coalition's primary goal was optimal oral health. Emergency room visit costs related to dental health conditions could be resolved by access to dental care. Reimbursement rate increases had helped, and the coalition hoped

that it would also bring more providers into the networks. Ms. Whatley read a letter from Dr. Kayla Fields, DMD, which reiterated concerns about access and the need for restorative dentistry in the context of substance abuse disorder.

In response to a question by Co-Chair Lewis, Dr. Collins stated that, as a Medicaid dentist and dental director at Redbird Mission and Clinic, he identified problems that non-Medicaid providers did not experience. Funding was always challenging. Reaching prior-authorization standards was also a hurdle for some patients. The department needed to work with Medicaid dentists to develop appropriate reimbursement rates. Dr. Collins asked that the subcommittee not find these administrative regulations deficient.

Representative Frazier Gordon stated that, as an audiology provider, she was unsure during treatment planning when funding should come from the Office of Vocational Rehabilitation and when it should come from this Medicaid expansion. Each MCO had a different process for handling pre-authorization requests, and many claims went without reimbursement. Providers were leaving the Medicaid program because of reimbursement issues. In response to questions by Representative Frazier Gordon, Ms. Lee stated that the department would work with the MCOs involved to resolve specific reimbursement problems. The department also planned to work on access and reimbursement issues in general.

In response to questions by Representative Bridges, Ms. Lee stated that \$15 million had already been spent on this expansion, with \$24 million remaining. The federal matching fund was eighty-five (85) percent. Representative Bridges stated that matters pertaining to these Medicaid expansion administrative regulations should have first gone through the Interim Joint Committee or Standing Committees on Appropriations and Revenue or the Budget Review Subcommittee on Health and Family Services. These administrative regulations were found deficient by this subcommittee, not because of the policies involved, but because of problems with circumventing the appropriation process. In response to questions by Representative Bridges, Mr. Duke stated that the previous versions of these administrative regulations were found deficient by this subcommittee and nullified by Senate Bill 65 from the 2023 Regular Session of the General Assembly. That bill authorized the department to refile these administrative regulations if they were substantively distinct from the previous versions. In order to comply with the bill's requirements, the new versions of these administrative regulations were significantly different than the previous versions. This expansion had already helped many Kentuckians, and the funding was from an appropriation that had already taken place.

Senator Yates stated that Kentucky's health challenges had been mounting for many years. He thanked the department for its leadership in developing this package of administrative regulations. Future budgets should fund these programs, and these programs should not be stopped due to technicalities. A budget represented the General Assembly's moral compass, and a small amount of state expenditure was having a tremendous impact, including getting citizens back to work. Legislators all had the same goal of a healthier, more work-ready Kentucky.

Representative Bridges stated that the department should have brought this matter to the General Assembly during this past legislative session, rather than waiting and filing them immediately thereafter. The department should utilize the appropriate process for this to become a permanent, sustainable program. If other agencies followed this process precedent, Kentucky would quickly become financially dismantled. In response, Ms. Lee stated that the department had these funds already appropriated and budgeted and would be ending under budget.

In response to a question by Co-Chair Lewis, Ms. Lee stated that Secretary Friedlander had met with several legislators concerning these administrative regulations. Co-Chair Lewis stated that he supported the department's goals and had some concerns about certain, specific expenditures. All stakeholders and key legislators needed to work together to develop this program to meet the health care needs of Kentuckians.

907 KAR 001:126E. Dental services' coverage provisions and requirements.

907 KAR 001:632E. Vision program coverage provisions and requirements.

Payment and Services

907 KAR 003:190. Reimbursement for treatment related to clinical trials.

Medicaid Eligibility

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.

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.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 020:045E. Special income requirements for hospice and 1915(c) home and community based services.

907 KAR 020:045. Special income requirements for hospice and 1915(c) home and community based services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 8 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

907 KAR 020:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 4 and 10 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: Brain Injury

910 KAR 003:030. Traumatic brain injury trust fund operations program. Joe Barnett, branch manager, and Kelli Blair, procedures development specialist, represented the department.

Department for Community-Based Services: Child Support

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders. Laura Begin, regulation coordinator, represented the department.

Day Care

922 KAR 002:180. Requirements for registered relative child care providers in the Child Care Assistance Program.

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A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify that cabinet approval for certification for age-appropriate CPR and first aid training shall be based on research-based, scientific best practices. Without objection, and with agreement of the agency, the amendments were approved.

this subcommittee was tentatively scheduled for September 12, 2023, at 1 p.m.

The following administrative regulations were deferred or removed from the August 8, 2023, subcommittee agenda:

BOARDS AND COMMISSIONS: Kentucky State Board of Accountancy

201 KAR 001:050. License application.

Board of Nursing

201 KAR 020:700. Medication aide training programs and credentialing of medication aides.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Justice: Capital Punishment

501 KAR 016:310. Pre-execution medical actions.

Department of Juvenile Justice: Child Welfare

505 KAR 001:010. Definitions.

505 KAR 001:100. Admissions.

505 KAR 001:180. Day treatment admissions.

505 KAR 001:185. Day treatment programs.

505 KAR 001:210. Restraints and control methods.

505 KAR 001:220. Transportation of juveniles.

PUBLIC PROTECTION CABINET: Horse Racing Commission: General

810 KAR 002:100. Self-exclusion.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020. State Health Plan for facilities and services.

Division of Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review.

900 KAR 006:080E. Certificate of Need emergency circumstances.

Department for Medicaid Services

907 KAR 001:038. Hearing Program coverage provisions and requirements.

907 KAR 001:126. Dental services' coverage provisions and requirements.

907 KAR 001:632. Vision program coverage provisions and requirements.

Department for Community Based Services: Child Welfare

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

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

Day Care

922 KAR 002:245. Kentucky infant and toddler credential.

922 KAR 002:255. Kentucky school-aged youth development credential.

The subcommittee adjourned at 4:15 p.m. The next meeting of

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(11), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. If a quorum was present and the regulation was not deferred, administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON FAMILIES AND CHILDREN
Meeting of July 25, 2023

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the July 24, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Families & Children for its meeting on July 25, 2023, having been referred to the Committee on May 9, 2023 and June 13, 2023, pursuant to KRS 13A.290(6):

May 9, 2023

902 KAR 020:480

June 13, 2023

922 KAR 001:100

922 KAR 001:330

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 020:480

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 25, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 50th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

C - 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 "49 Ky.R." notation are regulations that were originally published in the previous year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect by the end of the *Register* year.

KRS Index

C - 8

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

C - 13

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

C - 14

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 are NOT 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

C - 15

A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
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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 *Register* year 50. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior *Registers*, please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

* Statement of Consideration not filed by deadline
 ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
 *** Withdrawn before being printed in Register
 IJC Interim Joint Committee
 (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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.

016 KAR 002:240E	50 Ky.R.	302	6-29-2023
As Amended IJC		595	8-1-2023
016 KAR 009:080E	49 Ky.R.	2200	4-26-2023
As Amended	50 Ky.R.	596	8-8-2023
016 KAR 009:100E	49 Ky.R.	2205	4-26-2023
As Amended	50 Ky.R.	599	8-8-2023
030 KAR 010:010E	50 Ky.R.	303	6-29-2023
030 KAR 010:020E	50 Ky.R.	305	6-29-2023
030 KAR 010:030E	50 Ky.R.	307	6-29-2023
030 KAR 010:040E	50 Ky.R.	309	6-29-2023
030 KAR 010:050E	50 Ky.R.	311	6-29-2023
030 KAR 010:060E	50 Ky.R.	312	6-29-2023
030 KAR 010:070E	50 Ky.R.	314	6-29-2023
030 KAR 010:080E	50 Ky.R.	315	6-29-2023
030 KAR 010:090E	50 Ky.R.	317	6-29-2023
030 KAR 010:100E	50 Ky.R.	318	6-29-2023
030 KAR 010:110E	50 Ky.R.	320	6-29-2023
030 KAR 010:120E	50 Ky.R.	321	6-29-2023
031 KAR 004:196E	50 Ky.R.	582	8-15-2023
040 KAR 009:010E	49 Ky.R.	1563	1-6-2023
Replaced		2272	7-24-2023
040 KAR 009:020E	49 Ky.R.	1565	1-6-2023
Replaced		2273	7-24-2023
101 KAR 001:365E	50 Ky.R.	324	7-11-2023
201 KAR 023:016E	49 Ky.R.	976	10-3-2022
Withdrawn			6-28-2023
201 KAR 023:160E	50 Ky.R.	326	6-28-2023
201 KAR 023:051E	49 Ky.R.	1239	11-15-2022
Replaced		1803	7-5-2023
202 KAR 002:020E	50 Ky.R.	329	7-5-2023
202 KAR 007:555E	50 Ky.R.	5	5-22-2023
503 KAR 001:140E	50 Ky.R.	331	6-27-2023
505 KAR 001:120E	49 Ky.R.	1567	1-13-2023
Am Comments		1886	3-6-2023
505 KAR 001:140E	49 Ky.R.	1569	1-13-2023
Am Comments		1888	3-6-2023
As Amended		2075	4-11-2023
505 KAR 001:200E	49 Ky.R.	2208	5-15-2023
Am Comments	50 Ky.R.	385	7-12-2023
505 KAR 001:210E	49 Ky.R.	2211	5-15-2023
505 KAR 001:220E	49 Ky.R.	2213	5-15-2023
701 KAR 008:010E	49 Ky.R.	984	10-13-2022
Replaced		1924	7-5-2023
701 KAR 008:020E	49 Ky.R.	989	10-13-2022
Replaced		1928	7-5-2023
701 KAR 008:030E	49 Ky.R.	998	10-13-2022

Replaced		1167	7-5-2023
701 KAR 008:040E	49 Ky.R.	1001	10-13-2022
Replaced		1935	7-5-2023
701 KAR 008:050E	49 Ky.R.	1005	10-13-2022
Replaced		1216	7-5-2023
787 KAR 001:090E	49 Ky.R.	1571	12-22-2022
Replaced		2096	8-1-2023
787 KAR 001:100E	49 Ky.R.	1575	12-22-2022
806 KAR 017:570E	49 Ky.R.	2215	5-15-2023
As Amended	50 Ky.R.		8-8-2023
809 KAR 001:002E	50 Ky.R.	339	7-10-2023
809 KAR 001:003E	50 Ky.R.	341	7-10-2023
Replaced		2097	8-1-2023
809 KAR 010:001E	50 Ky.R.	346	7-10-2023
809 KAR 010:002E	50 Ky.R.	349	7-10-2023
809 KAR 010:003E	50 Ky.R.	354	7-10-2023
809 KAR 010:004E	50 Ky.R.	358	7-10-2023
809 KAR 010:005E	50 Ky.R.	362	7-10-2023
809 KAR 010:006E	50 Ky.R.	369	7-10-2023
809 KAR 010:007E	50 Ky.R.	375	7-10-2023
809 KAR 010:008E	50 Ky.R.	377	7-10-2023
810 KAR 001:030E	50 Ky.R.	379	7-10-2023
807 KAR 005:001E	49 Ky.R.	734	9-14-2022
810 KAR 004:010E	49 Ky.R.	2048	3-29-2023
900 KAR 005:020E	49 Ky.R.	1880	3-15-2023
Am Comments		2256	5-11-2023
900 KAR 006:075E	49 Ky.R.	1882	3-15-2023
Am Comments		2257	5-11-2023
900 KAR 006:080E	50 Ky.R.	11	5-19-2023
900 KAR 014:010E	49 Ky.R.	2052	3-29-2023
902 KAR 020:490E	49 Ky.R.	1576	12-29-2022
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902 KAR 045:190E	50 Ky.R.	584	8-1-2023
902 KAR 055:015E	49 Ky.R.	2054	3-23-2023
907 KAR 001:038E	49 Ky.R.	2057	4-12-2023
As Amended		2261	5-9-2023
907 KAR 001:126E	49 Ky.R.	2062	4-12-2023
As Amended		2263	5-9-2023
907 KAR 001:632E	49 Ky.R.	2069	4-12-2023
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907 KAR 020:010E	49 Ky.R.	2234	5-15-2023
907 KAR 020:045E	49 Ky.R.	2237	5-15-2023
907 KAR 020:075E	49 Ky.R.	2240	5-15-2023
907 KAR 020:100E	49 Ky.R.	2243	5-15-2023
908 KAR 002:200E	50 Ky.R.	592	7-31-2023
922 KAR 001:360E	49 Ky.R.	2248	5-15-2023
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ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 005:001			
Amended	50 Ky.R.	66	
011 KAR 015:040			
Amended	50 Ky.R.	69	
011 KAR 015:110			
Amended	50 Ky.R.	71	
013 KAR 005:010	50 Ky.R.	486	
013 KAR 005:020	50 Ky.R.	488	
016 KAR 002:240	50 Ky.R.	490	
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016 KAR 009:080			Amended	50 Ky.R. 82	
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016 KAR 009:100			104 KAR 001:100		
Amended	49 Ky.R. 2339		Amended	50 Ky.R. 86	
As Amended	50 Ky.R. 621		105 KAR 001:001		
017 KAR 003:020			Amended	49 Ky.R. 1535	
Amended	49 Ky.R. 1469		As Amended	1899	7-5-2023
As Amended	1898	6-21-2023	105 KAR 001:220		
030 KAR 006:012	50 Ky.R. 492		Amended	49 Ky.R. 2342	
030 KAR 010:010	50 Ky.R. 493		As Amended	50 Ky.R. 633	
030 KAR 010:020	50 Ky.R. 494		105 KAR 001:365		
030 KAR 010:030	50 Ky.R. 496		Amended	49 Ky.R. 1537	
030 KAR 010:040	50 Ky.R. 498		As Amended	1900	7-5-2023
030 KAR 010:050	50 Ky.R. 500		105 KAR 001:390		
030 KAR 010:060	50 Ky.R. 501		As Amended	49 Ky.R. 317	
030 KAR 010:070	50 Ky.R. 502		105 KAR 001:457	50 Ky.R. 514	
030 KAR 010:080	50 Ky.R. 504		109 KAR 017:010	49 Ky.R. 2031	
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030 KAR 010:100	50 Ky.R. 506		201 KAR 001:050		
030 KAR 010:110	50 Ky.R. 508		Amended	49 Ky.R. 2347	
030 KAR 010:120	50 Ky.R. 509		201 KAR 001:190		
031 KAR 004:196			Amended	49 Ky.R. 1639	
Amended	50 Ky.R. 717		As Amended	2076	6-22-2023
032 KAR 001:020			As Amended IJC	50 Ky.R. 19	
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032 KAR 001:030			Amended	50 Ky.R. 88	
Amended	50 Ky.R. 74		201 KAR 002:040		
032 KAR 001:046	50 Ky.R. 231		Amended	50 Ky.R. 719	
032 KAR 001:050			201 KAR 002:050		
Amended	50 Ky.R. 76		Amended	50 Ky.R. 90	
032 KAR 004:020	50 Ky.R. 232		201 KAR 002:076		
032 KAR 002:020			Amended	50 Ky.R. 91	
Amendment	50 Ky.R. 401		201 KAR 002:105		
032 KAR 002:030			Amended	50 Ky.R. 95	
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032 KAR 002:040			Amended	50 Ky.R. 99	
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032 KAR 002:050			Amended	50 Ky.R. 101	
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032 KAR 002:060			Amended	50 Ky.R. 103	
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032 KAR 002:221(r)	50 Ky.R. 511		Amended	50 Ky.R. 104	
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040 KAR 009:010	49 Ky.R. 1707		Amended	50 Ky.R. 108	
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101 KAR 001:365			Am Comments	1943	
Amendment	50 Ky.R. 411		As Amended	2080	6-21-2023
101 KAR 002:034			201 KAR 005:055		
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As Amended	50 Ky.R. 622		As Amended	50 Ky.R. 22	7-24-2023
101 KAR 002:095			201 KAR 006:060		
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101 KAR 002:181	49 Ky.R. 2030		As Amended	2273	7-24-2023
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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	505 KAR 001:280	150.175	301 KAR 001:201
	505 KAR 001:300		301 KAR 001:410
	505 KAR 001:310	150.177	301 KAR 002:172

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150.180	301 KAR 001:122		505 KAR 001:200
	301 KAR 002:172		505 KAR 001:240
150.235	301 KAR 001:125		505 KAR 001:250
	301 KAR 001:410		505 KAR 001:260
150.290	301 KAR 001:115		505 KAR 001:270
	301 KAR 002:083		505 KAR 001:280
150.340	301 KAR 001:201		505 KAR 001:290
150.411	301 KAR 002:172		505 KAR 001:300
150.445	301 KAR 001:410		505 KAR 001:310
150.485	301 KAR 001:115		505 KAR 001:320
	301 KAR 001:125		505 KAR 001:330
150.620	301 KAR 001:201		505 KAR 001:340
	301 KAR 001:410		505 KAR 001:350
150.725	301 KAR 002:083		505 KAR 001:360
150.740	301 KAR 002:083		505 KAR 001:370
150.990	301 KAR 001:201		505 KAR 001:380
	301 KAR 001:410		505 KAR 001:390
	301 KAR 002:172		505 KAR 001:400
150.730-150.735	302 KAR 022:150		505 KAR 001:410
156.070	701 KAR 005:110		505 KAR 001:420
	702 KAR 003:340	202B.010	907 KAR 001:025
	702 KAR 007:065	205.200	921 KAR 003:020
157.320	702 KAR 007:125	205.720	921 KAR 001:420
157.350	702 KAR 007:125	205.750	921 KAR 001:420
157.650	701 KAR 005:110	205.755	921 KAR 001:420
157.655	701 KAR 005:110	205.795	921 KAR 001:420
157.660	701 KAR 005:110	209.030	902 KAR 020:300
157.665	701 KAR 005:110	209.032	902 KAR 020:300
158.030	702 KAR 007:125	210	908 KAR 002:300
158.070	702 KAR 007:125	210.410	908 KAR 002:300
158.100	702 KAR 007:125	211.180	902 KAR 100:185
158.240	702 KAR 007:125		902 KAR 100:195
158.281	505 KAR 001:260		902 KAR 100:200
159.010	702 KAR 007:125	211.185	908 KAR 002:300
159.030	702 KAR 007:125	211.842-211.852	902 KAR 100:019
159.035	702 KAR 007:125		902 KAR 100:040
159.140	702 KAR 007:125		902 KAR 100:050
159.170	702 KAR 007:125		902 KAR 100:058
160.160	701 KAR 005:110		902 KAR 100:065
	702 KAR 003:340		902 KAR 100:165
160.380	702 KAR 007:065		902 KAR 100:185
160.445	702 KAR 007:065		902 KAR 100:195
161.020	016 KAR 002:240		902 KAR 100:200
161.028	016 KAR 005:060	211.990	902 KAR 100:019
161.030	016 KAR 005:060		902 KAR 100:040
161.200	702 KAR 007:125		902 KAR 100:050
164.0401	013 KAR 005:010		902 KAR 100:058
	013 KAR 005:020		902 KAR 100:065
164.0402	013 KAR 005:010		902 KAR 100:165
	013 KAR 005:020		902 KAR 100:185
164.0403	013 KAR 005:010		902 KAR 100:195
164.0404	013 KAR 005:020		902 KAR 100:200
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164.772	301 KAR 002:083	216.532	902 KAR 020:300
164.7871-164.7885	011 KAR 015:110	216.535	902 KAR 020:300
164.7881	011 KAR 015:040	216.540	902 KAR 020:300
194A.005	908 KAR 002:300	216.543	902 KAR 020:300
194.540	201 KAR 020:620	216.545	902 KAR 020:300
194.705	902 KAR 020:300	216.547	902 KAR 020:300
194A.005	902 KAR 100:040	216.785-216.793	902 KAR 020:300
	902 KAR 100:050	216B.010	900 KAR 006:075
	902 KAR 100:058	216B.010 – 216B.130	900 KAR 006:020
	902 KAR 100:065	216B.015	900 KAR 006:075
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	902 KAR 100:195		902 KAR 100:185
	902 KAR 100:200	216B.020	900 KAR 006:080
	908 KAR 002:300	216B.040	900 KAR 006:075
196.280	505 KAR 001:420	216B.061	900 KAR 006:080
197.045	505 KAR 001:420	216B.062	900 KAR 006:075
198A.740 – 198A.750	202 KAR 002:020	216B.090	900 KAR 006:075
199.011	922 KAR 001:360	216B.095	900 KAR 006:075
199.640 – 199.680	922 KAR 001:360	216B.115	900 KAR 006:075
199.801	922 KAR 001:360	216B.178	900 KAR 006:020
200.080-200.120	505 KAR 001:110	216B.455	900 KAR 006:075

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216B.990	900 KAR 006:075		810 KAR 004:030
	900 KAR 006:080		810 KAR 004:040
217.015	201 KAR 002:225	230.240	810 KAR 002:020
	902 KAR 045:190E		810 KAR 004:030
217.025	902 KAR 045:190E	230.260	810 KAR 002:020
217.035	902 KAR 045:190E		810 KAR 002:070
217.037	902 KAR 045:190E		810 KAR 002:100
217.0	902 KAR 045:190E		810 KAR 003:010
217.055	201 KAR 002:076		810 KAR 004:030
217.065	201 KAR 002:076		810 KAR 004:040
217.177	201 KAR 016:550	230.280	810 KAR 003:010
218A.205	201 KAR 002:020	230.290	810 KAR 003:010
	201 KAR 002:050		810 KAR 004:030
22.1-400	401 KAR 042:250	230.300	810 KAR 003:010
224.1-405	401 KAR 042:250	230.310	810 KAR 004:030
224.10-410	401 KAR 042:250	230.320	810 KAR 004:030
224.10-420	401 KAR 042:250	230.811	810 KAR 003:010
224.10-430	401 KAR 042:250	230.817	810 KAR 003:010
224.10-440	401 KAR 042:250	237.110	301 KAR 002:172
224.10-470	401 KAR 042:250	246.030	302 KAR 022:150
224.20-100	401 KAR 051:010	247.232	302 KAR 016:020
224.20-110	401 KAR 051:010		302 KAR 016:030
224.20-120	401 KAR 051:010	247.233	302 KAR 016:072
224.60-110	401 KAR 042:250		302 KAR 016:111
224.60-120	401 KAR 042:250	247.234	301 KAR 001:410
224.60-130	401 KAR 042:250		302 KAR 016:020
224.60-135	401 KAR 042:250		302 KAR 016:030
224.60-140	401 KAR 042:250	247.236	302 KAR 016:020
224.60-150	401 KAR 042:250		302 KAR 016:030
229.011	201 KAR 027:005	251.355	302 KAR 033:010
229.021	201 KAR 027:012	251.375	302 KAR 033:010
229.025	201 KAR 027:008	251.380	302 KAR 033:010
	201 KAR 027:011	251.470	302 KAR 033:010
	201 KAR 027:016	251.990	302 KAR 033:010
229.031	201 KAR 027:005	257.020	302 KAR 022:150
	201 KAR 027:011	257.030	302 KAR 022:150
	201 KAR 027:012	257.080	201 KAR 016:701
	201 KAR 027:016		302 KAR 022:150
229.035	201 KAR 027:008	257.160	201 KAR 016:560
229.055	201 KAR 027:011	257.990	302 KAR 022:150
	201 KAR 027:016	258	201 KAR 016:550
229.065	201 KAR 027:008	258.043	201 KAR 016:701
229.071	201 KAR 027:012	258.065	201 KAR 016:701
229.081	201 KAR 027:012	260.850	902 KAR 045:190E
229.091	201 KAR 027:012	273	922 KAR 001:580
229.111	201 KAR 027:005	273.2	921 KAR 003:095
	201 KAR 027:011	273.10	921 KAR 003:095
	201 KAR 027:016	301	201 KAR 016:550
229.131	201 KAR 027:005	302.32	921 KAR 001:420
	201 KAR 027:011	302.38	921 KAR 001:420
	201 KAR 027:016	302.51-302.54	921 KAR 001:420
229.155	201 KAR 027:005	303.72	921 KAR 001:420
	201 KAR 027:011	304.1-050	806 KAR 017:290
	201 KAR 027:016	304.2-100	806 KAR 017:290
229.171	201 KAR 027:005	304.2-230	806 KAR 017:290
	201 KAR 027:008	304.2-310	806 KAR 017:290
	201 KAR 027:011	304.9-020	806 KAR 009:400
	201 KAR 027:012	304.9-430	806 KAR 009:400
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	809 KAR 001:003	304.9-440	806 KAR 009:400
	809 KAR 010:001	304.17A-005	806 KAR 017:290
	809 KAR 010:002	304.17A-1631	806 KAR 017:290
	809 KAR 010:003	304.17A-168	806 KAR 017:290
	809 KAR 010:004	304.17A-505	806 KAR 017:290
	809 KAR 010:005	304.17A-535	806 KAR 017:290
	809 KAR 010:006	304.17A-600	806 KAR 017:290
	809 KAR 010:007	304.17A-607	806 KAR 017:290
	809 KAR 010:008	304.17A-617	806 KAR 017:290
	810 KAR 004:001	304.17A-621 – 304.17A-631	806 KAR 017:290
230.215	810 KAR 002:020	309.080	908 KAR 002:300
	810 KAR 002:070	309.130	908 KAR 002:300
	810 KAR 003:010	309.460	907 KAR 003:310
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311	201 KAR 027:008		201 KAR 016:552
311.571	908 KAR 002:300	321.185	201 KAR 016:701
311.840 – 311.862	908 KAR 002:300	321.187	201 KAR 016:701
311A.030	202 KAR 007:550	321.188	201 KAR 016:701
	202 KAR 007:555	321.190	201 KAR 016:510
311A.180	202 KAR 007:550		201 KAR 016:512
311A.190	202 KAR 007:550		201 KAR 016:51
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314.042	908 KAR 002:300		201 KAR 016:702
314.400 – 314.414	201 KAR 020:620		201 KAR 016:750
315.010	201 KAR 002:040	321.193	201 KAR 016:702
	201 KAR 002:105		201 KAR 016:510
	201 KAR 002:225	321.200	201 KAR 016:701
	201 KAR 002:320		201 KAR 016:514
	201 KAR 002:340	321.201	201 KAR 016:510
315.020	201 KAR 002:040	321.211	201 KAR 016:510
	201 KAR 002:076		201 KAR 016:510
	201 KAR 002:205	321.207	201 KAR 016:514
	201 KAR 002:225		201 KAR 016:550
	201 KAR 002:320		201 KAR 016:552
	201 KAR 002:340		201 KAR 016:560
315.035	201 KAR 002:050	321.208	201 KAR 016:514
	201 KAR 002:076	321.235	201 KAR 016:512
	201 KAR 002:225		201 KAR 016:516
	201 KAR 002:240		201 KAR 016:552
	201 KAR 002:340		201 KAR 016:510
315.036	201 KAR 002:320		201 KAR 016:514
315.0351	201 KAR 002:050	321.351	201 KAR 016:550
	201 KAR 002:076		201 KAR 016:552
	201 KAR 002:205		201 KAR 016:560
315.036	201 KAR 002:050	321.441	201 KAR 016:702
315.050	201 KAR 002:020		201 KAR 016:750
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315.060	201 KAR 002:050	321.443	201 KAR 016:702
315.110	201 KAR 002:050		201 KAR 016:750
315.120	201 KAR 002:050	327.300	201 KAR 022:170
315.121	201 KAR 002:105	335B	201 KAR 016:560
315.191	201 KAR 002:040	335.070	201 KAR 023:055
	201 KAR 002:050	335.080	201 KAR 023:160
	201 KAR 002:076		908 KAR 002:300
	201 KAR 002:205	335.090	201 KAR 023:160
	201 KAR 002:225	335.100	201 KAR 023:160
	201 KAR 002:320		908 KAR 002:300
	201 KAR 002:340	335.158	201 KAR 023:170
	201 KAR 002:390	335.300	908 KAR 002:300
315.300	201 KAR 002:205	335.500	908 KAR 002:300
315.335	201 KAR 002:205	342.640	902 KAR 020:500
315.350	201 KAR 002:105	344.010	104 KAR 001:080
315.400	201 KAR 002:105	344.010-344.500	104 KAR 001:050
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315.406	201 KAR 002:105	344.070	104 KAR 001:040
315.408	201 KAR 002:105	344.120	104 KAR 001:100
315.410	201 KAR 002:105	344.130	104 KAR 001:100
315.4102	201 KAR 002:390	344.190	104 KAR 001:010
315.4104	201 KAR 002:390	344.360-344.385	104 KAR 001:080
315.4106	201 KAR 002:390	344.500	104 KAR 001:100
315.4108	201 KAR 002:390	344.600-344.680	104 KAR 001:080
315.4110	201 KAR 002:390	344.990	104 KAR 001:050
315.412	201 KAR 002:105	363.900-363.908	302 KAR 016:071
319.050	908 KAR 002:300	405.520	921 KAR 001:420
319.056	908 KAR 002:300	407.5101	921 KAR 001:420
319.064	908 KAR 002:300	424.260	702 KAR 003:340
319C.010	908 KAR 002:300	438.305	902 KAR 045:190E
321	302 KAR 022:150	439.265	505 KAR 001:420
321.175	201 KAR 016:701	439.267	505 KAR 001:420
	201 KAR 016:702	439.600	505 KAR 001:310
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	505 KAR 001:240		030 KAR 010:050
	505 KAR 001:250		030 KAR 010:060
	505 KAR 001:260		030 KAR 010:070
	505 KAR 001:270		030 KAR 010:080
	505 KAR 001:280		030 KAR 010:090
	505 KAR 001:290		030 KAR 010:100
	505 KAR 001:300		030 KAR 010:110
	505 KAR 001:310		030 KAR 010:120
	505 KAR 001:320		
	505 KAR 001:330		
	505 KAR 001:340		
	505 KAR 001:350		
	505 KAR 001:360		
	505 KAR 001:370		
	505 KAR 001:380		
	505 KAR 001:390		
	505 KAR 001:400		
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	505 KAR 001:420		
600.020	922 KAR 001:580		
	922 KAR 001:360		
605.110	505 KAR 001:260		
620.020	201 KAR 020:620		
	922 KAR 001:580		
620.045	922 KAR 001:580		
620.050	922 KAR 001:580		
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	921 KAR 003:095		
9 C.F.R.	302 KAR 022:150		
10 C.F.R.	902 KAR 100:040		
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29 C.F.R.	104 KAR 001:040		
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42 C.F.R.	902 KAR 020:300		
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45 C.F.R.	921 KAR 001:420		
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10 U.S.C.	106 KAR 004:020		
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20 U.S.C.	702 KAR 007:065		
21 U.S.C.	201 KAR 002:076		
29 U.S.C.	921 KAR 003:020		
38 U.S.C.	921 KAR 003:020		
42 U.S.C.	104 KAR 001:040		
	401 KAR 051:010		
	902 KAR 100:040		
	902 KAR 100:050		
	902 KAR 100:065		
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	907 KAR 001:025		
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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
002 KAR 002:010	06-27-2023	Remain in Effect As Is
002 KAR 002:020	06-27-2023	Remain in Effect As Is
002 KAR 002:040	06-27-2023	Remain in Effect As Is
002 KAR 002:050	06-27-2023	Remain in Effect As Is
002 KAR 002:060	06-27-2023	Remain in Effect As Is
002 KAR 002:070	06-27-2023	Remain in Effect As Is
201 KAR 020:520	07-17-2023	Remain in Effect As Is
301 KAR 002:122	07-14-2023	To be amended, filing deadline 01-04-2025
301 KAR 005:040	08-03-2023	To be amended, filing deadline 02-03-2025
780 KAR 007:060	08-07-2023	Remain in Effect As Is
803 KAR 002:307	08-31-2023	Remain in Effect As Is
803 KAR 002:318	08-31-2023	Remain in Effect As Is
803 KAR 002:421	08-31-2023	Remain in Effect As Is
806 KAR 018:020	06-13-2023	Remain in Effect As Is
902 KAR 002:060	08-10-2023	Remain in Effect As Is
902 KAR 010:085	08-10-2023	Remain in Effect As Is
902 KAR 021:030	08-10-2023	Remain in Effect As Is
902 KAR 100:080	06-12-2023	Remain in Effect As Is
902 KAR 100:085	06-12-2023	Remain in Effect As Is
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50th 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. 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
703 KAR 005:240	07-20-2023		

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