



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on October 10, 2023, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 767 [Online agenda is updated as needed](#)

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The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 Edition of the
KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number. Example: 50th Year of the Kentucky Register, page 318 (short form: 50 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, October 10, 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. (Deferred from September)

011 KAR 015:040. Kentucky Educational Excellence Scholarship award determination procedure. (Deferred from September)

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs. (Deferred from September)

COUNCIL ON POSTSECONDARY EDUCATION

Healthcare

013 KAR 005:010. Healthcare training scholarships.

013 KAR 005:020. Healthcare program incentives.

EDUCATION PROFESSIONAL STANDARDS BOARD

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016 KAR 002:240. Interim certificate. (Filed with Emergency)

SECRETARY OF STATE

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030 KAR 006:012. Repeal of 030 KAR 006:011.

Safe at Home Program

030 KAR 010:010. Definitions for 30 KAR Chapter 10. (Filed with Emergency)

030 KAR 010:020. Application and certification. (Filed with Emergency)

030 KAR 010:030. Notification of expiration and recertification in the Safe at Home Program. (Filed with Emergency)

030 KAR 010:040. Cancellation, appeal, and withdrawal. (Filed with Emergency)

030 KAR 010:050. Application assistant training and designation. (Filed with Emergency)

030 KAR 010:060. Release of participant information to criminal justice officials or agencies. (Filed with Emergency)

030 KAR 010:070. School enrollment and record transfers. (Filed with Emergency)

030 KAR 010:080. Substitute address. (Filed with Emergency)

030 KAR 010:090. Exercise of program participant's privileges. (Filed with Emergency)

030 KAR 010:100. Attaining age of majority. (Filed with Emergency)

030 KAR 010:110. Service of process. (Filed with Emergency)

030 KAR 010:120. Recognition of certification in other state. (Filed with Emergency)

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031 KAR 004:196E. Consolidation of precincts and precinct election officers. (Filed with Ordinary)

REGISTRY OF ELECTION FINANCE

Reports and Forms

032 KAR 002:020. General provisions.

032 KAR 002:030. Complaints; internally-generated matters.

032 KAR 002:040. Investigatory procedures.

032 KAR 002:050. Conciliation.

032 KAR 002:060. Advisory opinions.

032 KAR 002:221. Repeal of 032 KAR 002:220.

032 KAR 002:230. Processing of records requests.

PERSONNEL BOARD

Board

101 KAR 001:365E. Appeal and hearing procedures. (Filed with ordinary) ("E" expires 04-06-2024) (Deferred from September)

101 KAR 001:365. Appeal and hearing procedures. (Filed with Emergency)

KENTUCKY COMMISSION ON HUMAN RIGHTS

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104 KAR 001:010. Posting, distribution and availability of notices and pamphlets. (Deferred from September)

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities. (Deferred from September)

104 KAR 001:050. Standards and procedures for providing equal employment opportunities. (Deferred from September)

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104 KAR 001:080. Guidelines on fair housing. (Deferred from September)

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations. (Deferred from September)

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pension Authority

General Rules

105 KAR 001:457. In-line-of-duty survivor benefits.

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:020. Examination. (Deferred from September)

201 KAR 002:050. Licenses and permits; fees. (Amended After Comments)

201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors. (Deferred from September)

201 KAR 002:205. Pharmacist-in-charge. (Deferred from September)

201 KAR 002:225. Special limited pharmacy permit- Medical gas. (Deferred from September)

201 KAR 002:240. Special limited pharmacy permit- Charitable. (Deferred from September)

201 KAR 002:320. Requirements for manufacturers and virtual manufacturers. (Deferred from September)

201 KAR 002:340. Special limited pharmacy permit- clinical practice. (Deferred from September)

201 KAR 002:390. Requirements for third-party logistics providers. (Deferred from September)

Board of Veterinary Examiners

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

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

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

201 KAR 016:701. Standards for medical records.

201 KAR 016:702. Standards for veterinary surgery.

201 KAR 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.

Board of Nursing

201 KAR 020:620. Licensing requirements for licensed certified professional midwives.

201 KAR 020:700. Medication aide training programs and credentialing of medication aides. (Amended After Comments)

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Social Work

201 KAR 023:055. Inactive status of license.

201 KAR 023:160. Temporary permission to practice. (Filed with Emergency)

201 KAR 023:170. Telehealth and social work practice.

INDEPENDENT ADMINISTRATIVE BODIES

Kentucky Housing Corporation

202 KAR 002:020. Rural Housing Trust Fund. (Filed with Emergency)

Board of Emergency Medical Services

202 KAR 007:550. Required equipment and vehicle standards.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 001:115. Propagation of aquatic organisms.

301 KAR 001:122. Importation, possession, and prohibited aquatic species. (Amended After Comments)

301 KAR 001:125. Transportation of fish.

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301 KAR 002:172. Deer hunting seasons, zone, and requirements.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Air Quality

401 KAR 051:010. Attainment status designations. (Comments Received, SOC due 09-15-2023)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Justice

Capital Punishment

501 KAR 016:310. Pre-execution medical actions. (Amended After Comments)

Kentucky Law Enforcement Council

503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards. (Filed with Emergency)

Department of Juvenile Justice

Child Welfare

505 KAR 001:010. Definitions. (Amended After Comments)

505 KAR 001:100. Admissions. (Amended After Comments)

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505 KAR 001:180. Day treatment admissions. (Not Amended After Comments)
505 KAR 001:185. Day treatment programs. (Amended After Comments)
505 KAR 001:210. Restraints and control methods. (Filed with Emergency) (Not Amended After Comments)
505 KAR 001:220. Transportation of juveniles. (Filed with Emergency) (Not Amended After Comments)

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. (Deferred from September)

PUBLIC PROTECTION CABINET

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Agents, Consultants, Solicitors and Adjusters

806 KAR 009:400. Public adjuster filings.

Health Insurance Contracts

806 KAR 017:290. Independent External Review Program.

Kentucky Horse Racing Commission

Sports Wagering

809 KAR 001:002E. Service provider licensing. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

809 KAR 001:002. Service provider licensing. (Filed with Emergency)

809 KAR 001:003E. Occupational licenses. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

809 KAR 001:003. Occupational licenses. (Filed with Emergency)

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809 KAR 010:001E. General provisions. (Filed with ordinary) ("E" expires 04-05-2024) (Amended After Comments)

809 KAR 010:001. General provisions. (Filed with Emergency)

809 KAR 010:002E. Standards for sports wagering. (Filed with ordinary) ("E" expires 04-05-2024) (Amended After Comments)

809 KAR 010:002. Standards for sports wagering. (Filed with Emergency)

809 KAR 010:003E. Technical requirements and oversight. (Filed with ordinary) ("E" expires 04-05-2024) (Amended After Comments)

809 KAR 010:003. Technical requirements and oversight. (Filed with Emergency)

809 KAR 010:004E. Sports wagering accounts. (Filed with ordinary) ("E" expires 04-05-2024) (Amended After Comments)

809 KAR 010:004. Sports wagering accounts. (Filed with Emergency)

809 KAR 010:005E. Licensed premises. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

809 KAR 010:005. Licensed premises. (Filed with Emergency)

809 KAR 010:006E. Audit and internal control standards. (Filed with ordinary) ("E" expires 04-05-2024) (Amended After Comments)

809 KAR 010:006. Audit and internal control standards. (Filed with Emergency)

809 KAR 010:007E. Responsible gaming and advertising. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

809 KAR 010:007. Responsible gaming and advertising. (Filed with Emergency)

809 KAR 010:008E. Disciplinary actions and hearings. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

809 KAR 010:008. Disciplinary actions and hearings. (Filed with Emergency)

Horse Racing: General

810 KAR 002:020. Thoroughbred and flat racing officials.

810 KAR 002:070. Thoroughbred and other flat racing associations.

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

Horse Racing: Licensing

810 KAR 003:010E. Licensing of racing associations. (Filed with ordinary) ("E" expires 04-05-2024) (Deferred from September)

810 KAR 003:010. Licensing of racing associations. (Filed with Emergency)

Horse Racing: Flat and Steeplechase Racing

810 KAR 004:001. Definitions for 810 Chapter 4.

810 KAR 004:010. Horses.

810 KAR 004:030. Entries, subscriptions, and declarations.

810 KAR 004:040. Running of the race.

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 006:080. Certificate of Need emergency circumstances. (Filed with Emergency) (Comments Received, SOC due 09-15-2023)

Department for Public Health

Health Services and Facilities

902 KAR 020:300. Operation and services; nursing facilities. (Deferred from September)

Division of Public Health Protection and Safety

Food and Cosmetics

902 KAR 045:190E. Hemp-derived cannabinoid products; packaging and labeling requirements. (Emergency only) ("E" expires 04-27-2023)

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Department of Medicaid Services

Payment and Services

907 KAR 003:310. Community health worker services and reimbursement.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division of Behavioral Health

Mental Health

908 KAR 002:300E. Kentucky problem gambling assistance account. (Filed with Ordinary) ("E" expires 04-26-2023)

Department for Community Based Services

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)

922 KAR 001:360. Private child care placement, levels of care, and payment. (Filed with Emergency) (Amended After Comments)

922 KAR 001:580. Standards for children's advocacy centers.

Day Care

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

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

3. REGULATIONS **REMOVED** FROM OCTOBER'S AGENDA

DEPARTMENT OF AGRICULTURE

Livestock, Poultry, and Fish

302 KAR 022:150. Cervids. (Comments Received; SOC ext., due 10-13-2023)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

505 KAR 001:110. Intake and orientation. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:240. Dietary services. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:250. Drug screening and testing. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:260. Education. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:270. Grievances. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:280. Hair and grooming. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:290. Juvenile allowance and work detail. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:300. Juvenile records and information. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:310. Leave, releases, and furloughs. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:320. Library services. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:330. Personal property, dress, and clothing and bedding supply. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:340. Recreation. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:350. Religious practice. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:360. Searches. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:370. Treatment. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:380. Mail, visiting, and telephone use. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:390. Juvenile Accounts and Youth Activity Fund Account. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:400. Behavior management and progressive discipline. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:410. Isolation and protective custody. (Comments Received, SOC ext., due 10-13-2023)

505 KAR 001:420. Youthful offenders. (Comments Received, SOC ext., due 10-13-2023)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

Radiology

902 KAR 100:019. Standards for protection against radiation. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:040. General provisions for specific licenses. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:050. General licenses. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:065. Reciprocal recognition. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:165. Notices, reports, and instructions to employees. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:185. Standards for protection against radiation from radioactive materials. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:195. Licensing of special nuclear material. (Comments Received; SOC ext., due 10-13-2023)

902 KAR 100:200. Licenses and radiation safety requirements for irradiators. (Comments Received; SOC ext., due 10-13-2023)

*****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
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2024 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2024 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2023. This administrative regulation incorporates by reference the 2024 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2023 plan year. The existing language in the Benefits Selection Guide for the 2023 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2024 replaces this emergency administrative regulation.

ANDY BESHEAR, Governor
 MARY ELIZABETH BAILEY, Secretary

PERSONNEL CABINET
Office of the Secretary
(Emergency Amendment)

101 KAR 2:210E. 2023 and 2024 Plan Year Handbooks[Handbook] for the Public Employee Health Insurance Program.

EFFECTIVE: September 15, 2023

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2023 and 2024 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under

the self-insured plan the 2023 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2024 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2024 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2024.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2023 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2023 edition; and

(b) "2024 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2024 edition[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, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site on the Kentucky Employees' Health Plan page under KEHP Documents at <https://personnel.ky.gov/Pages/Kentucky-Employees'-Health-Plan.aspx> [Docs, Forms and Legal Notices page at: <https://personnel.ky.gov/Pages/healthinsurance.aspx>].

MARY ELIZABETH BAILEY, Secretary, Personnel Cabinet

APPROVED BY AGENCY: September 8, 2023

FILED WITH LRC: September 15, 2023 at 9:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2023, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on 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: Chris Chamness, Deputy Commissioner, Department of Employee Insurance, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email Chris.Chamness@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Chamness

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2024 plan year handbook

containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2024.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2024 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2024 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2023 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2023. The amendment adds and incorporates by reference the 2024 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2024.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2024. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2024 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2024 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This

administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 181,512 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects approximately 294,495 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

(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: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2024 plan year handbook. The 2024 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2024 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2024. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2024 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2024, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2024, employee contributions to health coverage premiums remain unchanged across all plans, as compared to 2023 premiums. Employer premium contribution amounts increased 16.5% across all plans combined, as compared to 2023 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and

local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? The 2024 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2023 open enrollment season and throughout the 2024 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The regulation does not create any cost savings or expenditures beyond the resources to promulgate this regulation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None. This regulation does not create any cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None. This regulation will not generate any cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation does not create any cost for regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? The regulation does not create any cost savings or expenditures for subsequent years.

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

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.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amended After Comments)**

809 KAR 10:001E. General provisions.

EFFECTIVE: September 15, 2023

Prior version –

New Emergency Administrative Regulation: 50 Ky.R.

346

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes definitions of various terms used throughout the commission's sports wagering administrative regulations.

Section 1. Definitions.

(1) "Abnormal wagering activity" means wagering activity exhibited by one (1) or more patrons and considered by a licensee to be an indicator of suspicious or illegal wagering activity.

(2) "Account holder" means an individual for whom the licensee has opened a sports wagering account.

(3) "Act" means 2023 Ky. Acts Ch. 147, of the Kentucky Revised Statutes, the Kentucky Sports Wagering Act of 2023.

(4) "Adjusted gross revenue" is defined by KRS 138.552.

(5) "Affiliate" means a person that, owns, controls, manages, or is operationally interdependent with a licensee.

(6) "Amateur youth sporting event" is defined by KRS 230.210.

(7) "Applicant" means a person that applies with the racing commission to be an authorized licensee.

(8) "Cancelled wager" means a sports wager that was valid at the time it was made but has since been invalidated in a manner acceptable by the commission due to an event or action that prevents its completion.

(9) "Card" means the list of sporting events and types of wager from which a patron can make selections for a given pool.

(10) "Cash" means U.S. currency.

(11) "Cash equivalent" means an asset convertible to cash for use in connection with authorized sports wagering, as follows:

- (a) Traveler's checks;
- (b) Foreign currency and coin;
- (c) Certified checks, cashier's checks, and money orders;
- (d) Personal checks and drafts;
- (e) Digital, crypto, and virtual currencies;
- (f) Online and mobile payment systems that support online money transfers; and

(g) Electronic devices with prepaid access, as defined by 31 C.F.R. Section 1010.100(ww).

(12) "Confidential information" means:

- (a) The amount of money credited to, debited from, withdrawn from, or present in any particular sports wagering account;
- (b) The amount of money wagered by a particular patron on any event or series of events;
- (c) The unique sports wagering account ID or username and authentication credentials that identify the particular account holder;
- (d) The identities of particular sporting events or types of wagers on which the patron is wagering or has wagered; and
- (e) Unless otherwise authorized by the patron, the name, address, and other information in possession of the licensee that would identify the patron to anyone other than the racing commission or the licensee.

(13) "Communications technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission

and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent, such as the internet and intranets.

(14) "Critical employee" means any employee whose duties directly impact the integrity of sports wagering in the Commonwealth, including:

(a) An individual who has the capability of affecting the outcome of sports wagering through deployment of code to production for any critical components of a sports wagering system;

(b) An individual who can deploy code to production and directly supervises individuals who have the capability of affecting the outcome of sports wagering in Kentucky through deployment of code to production for other than read-only or the equivalent access to any critical components of a sports wagering system;

(c) An individual who directly manages a licensee or who directly supervises an individual who directly manages a licensee; or

(d) An individual who has the capability to directly affect the outcome of a sports wager or a payout to a patron.

(15) "Data source" means a supplier that sells league or event data, participant, or team statistics necessary to enable sports wagering.

(16) "Department" means Department of Revenue.

(17) "Electronic sports, e-sports, and competitive video game events" or "electronic sporting events" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of prizes, money, or entertainment.

(18) "Electronic sporting event operator" means a person or entity which sanctions, regulates, or organizes an electronic sporting event.

(19) "Geofence" is defined by KRS 230.210.

(20) "GLI-CMP Guide" means the Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020.

(21) "GLI-33 Standards" means the Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version. 1.1, and its appendices, Revised May 14, 2019.

(22) "Integrity monitoring" means the monitoring of sports wagering to identify abnormal or suspicious wagering activities from a match-fixing and sporting corruption standpoint.

(23) "Internal controls," "minimum internal control standards," or "control standards" means a system of internal procedures, as well as administrative and accounting controls related to the integrity of sports wagering. This type of system shall include wagering rules and shall be required by the racing commission as a condition to sports wagering, pursuant to the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(24) "Layoff wager" means a wager placed by a licensee with another licensee for the purpose of offsetting sports wagers.

(25) "Licensed premises" is defined in KRS 230.210.

(26) "Licensed facility for sports wagering" is defined in KRS 230.210

(27) "Licensee" means the holder of a sports wagering operator's license or a service provider license, as applicable.

(28) "License holder" means any person who holds a sports wagering operator's license, a service provider license, or an occupational license.

(29) "Mobile sports wagering" means the conduct of sports wagering through or by means of Web sites, mobile applications, or other off-site technology approved by the commission.

(30) "Multi-factor authentication" means a type of authentication which uses two (2) or more of the following to verify a person's identity:

- (a) Information known only to the person (e.g., a password, pattern or answers to challenge questions);
- (b) An item possessed by a person (e.g., an electronic token, physical token or an identification card); or

(c) A person's biometric data (e.g., fingerprints, facial or voice recognition).

(31) "Operator licensee" or "sports wagering operator" or means a Kentucky racing association licensed to conduct sports wagering pursuant to KRS 230.805.

(32) "Person" is defined by KRS 230.210.

(33) "Personal identifying information" means any sensitive information that could potentially be used to identify a particular patron, such as a legal name, date of birth, place of birth, social security number (or equivalent government identification number), driver's license number, passport number, residential address, phone number, email address, debit instrument number, credit card number, or bank account number.

(34) "Patron" means a person who wagers on sporting events.

(35) "Pool" means an offering where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.

(36) "Prize pool" means the prize available for an individual tournament, contest, or pool.

(37) "Prohibited patron" means:

(a) Any underage person;

(b) Any individual wagering while not in the authorized geographic boundaries within the Commonwealth of Kentucky;

(c) Any individual wagering on behalf of another;

(d) Any restricted patron wagering in violation of their restrictions;

(e) Any voluntarily or involuntarily excluded person; or

(f) Any individual wagering in violation of commonwealth, local, or federal law.

(38) "Race and sports book" means the area designated by the licensee and approved by the commission that is utilized as the primary location for displaying sporting events and offering sports wagering on the licensed premises.

(39) "Racing commission" is defined by KRS 230.210.

(40) "Rake" means the fee that is deducted by a licensee from entry fees paid by patrons who participate in a tournament, contest, or pool.

(41) "Rake adjustment" means an adjustment made by a licensee to account for any shortfall in connection with a tournament, contest, or pool.

(42) "Restricted patron" means any patron restricted by KRS 230.820 or 230.823 and close family members of the persons included in KRS 230.823, who are defined as parents, children, grandparents, and siblings.

(43) "Self-exclusion list" means a list of individuals who voluntarily excluded themselves from establishing or maintaining a sports wagering account with a licensee.

(44) "Sensitive information" means personal identifying information, transactional wagering data, authentication credentials, and other data that shall be handled in a secure manner such as PINs and passwords, and secure seeds and keys used in encryption.

(45) "Service provider" is defined by KRS 230.210.

(46) "Shared liquidity pool" means a tournament, contest, or pool offering in Kentucky and at least one other jurisdiction where patrons may make selections of outcomes on a set number of sporting events and types of wager on a card in order to enter for a chance to win all or a portion of the prize pool.

(47) "Sporting event" is defined by KRS 230.210.

(48) "Sports governing body" is defined by KRS 230.210.

(49) "Sports wagering" is defined by KRS 230.210.

(50) "Sports wagering account" or "account" means an account established by an account holder for use in sports wagering with a specific identifiable record of deposits, wagers, and withdrawals.

(51) "Sports wagering device" is defined by KRS 230.210.

(52) "Sports wagering kiosk" means a sports wagering device within a licensed facility for sports wagering that, at a minimum, may be used for the submission of wagers placed by a patron directly and may be used for redemption of applicable awards or prizes.

(53) "Sports wagering service provider" or "service provider" is defined by KRS 230.210.

(54) "Sports wagering system" means the hardware, software,

firmware, communications technology, other equipment, as well as procedures implemented in order to allow patron participation in sports wagering, and, if supported, the corresponding equipment related to the display of the wager outcomes, and other similar information necessary to facilitate patron participation.

(55) "Sports wagering ticket" or "ticket" means a printed record, or digital representation thereof, issued by a sports wagering system that contains information pertaining to a sports wager.

(56) "Sports wagering voucher" or "voucher" means a printed record, or digital representation thereof, issued by a sports wagering system that may be used to fund a sports wager or may be redeemable for cash.

(57) "Sufficient clarity" means the capacity of a surveillance system to record images at a minimum of twenty (20) frames per second or equivalent recording speed, or other recording speed approved by the commission, and at a resolution determined by the racing commission to clearly identify the intended activity, person, object, or location.

(58) "Surveillance operation room(s)" means the secured area(s) where surveillance takes place or where active surveillance equipment is located.

(59) "Surveillance system" means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other equipment used for surveillance.

(60) "Suspicious or illegal wagering activity" means abnormal wagering activity that cannot be explained and is indicative of any prohibited activity or conduct that may corrupt the outcome of an event, including the following:

(a) Match-fixing;

(b) The manipulation of an event;

(c) Misuse of inside information;

(d) A potential breach of a sports governing body's or equivalent's internal rules or code of conduct pertaining to sports wagering; or

(e) Any other conduct that corrupts the outcome of an event.

(61) "Supplier" means a person who provides services, goods, software, or other components necessary for the creation of sports wagering markets and determination of sports wager outcomes, to any licensee involved in the acceptance of sports wagers, such as: providers of data feeds and odds services, internet platform providers, risk management providers, integrity monitoring providers.

(62) "Ticket writer station" means a sports wagering device that at a minimum will be used by a ticket writer for the execution or formalization of wagers placed on behalf of a patron.

(63) "Type of wager" means the form of a wager offered by a licensee, such as single game bets, teaser bets, parlays, over-under bets, money line bets, pools, in-game wagering, in-play bets, proposition bets, and straight bets.

(64) "Underage person" means any person under eighteen (18) years of age.

(65) "Void wager" or "voided wager" means a sports wager that was not valid at the time it was placed or a sports wager that was valid at the time it was placed but has since become invalid as defined in 809 KAR 10:002, Section 8.

(66) "Voluntarily excluded person" means any individual whose name is included, at their own request, on a self-exclusion list.

(67) "Wager" or "sports wager" means a sum of money or representation of value that is risked on a sporting event[an occurrence] for which the outcome is uncertain.

(68) "Wagering windows" means teller windows dedicated to the receipt and processing of sports wagers and pari-mutuel wagers on horse racing in the race and sports book location of a licensed facility for sports wagering.

(69) "Website or mobile application" means a website or application on a mobile phone or other device through which an individual is able to place a sports wager.

(70) "Winnings" means the total cash value of all property or sums, such as the currency or instruments of monetary value paid to a patron by a licensee as a direct result of a winning sports wager.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Gaming Laboratories International, GLI-33: Standards for Event Wagering Systems, Version 1.1, and its appendices, May 14, 2019 Revision Date", KHRC 10-001-1, 06/2023; and

(b) "Gaming Laboratories International, GLI-CMP: Change Management Program Guide, Version 1.0, Published May 6, 2020", KHRC 10-001-02, 06/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: September 15, 2023

FILED WITH LRC: September 15, 2023 at 10:00 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for terms used in 809 KAR Chapter 10.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that various terms in 809 KAR Chapter 10 are properly and precisely defined.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This regulation sets forth the defined terms that are used in the regulations in 809 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation fulfills the commission's statutory mandate to prescribe the conditions under which sports wagering is conducted in the Commonwealth by defining terms used in 809 KAR Chapter 10.

(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 changes the regulation by clarifying that the definition of "wager" or "sports wager" includes wagers on "a sporting event." This removes the term "occurrence," which may have incorrectly implied that sports wagers could not be made on the non-occurrence of events.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of "wager" or "sports wager." The amendment is made pursuant to a public comment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This amendment clarifies a defined term that is used in the regulations set forth in 809 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: This amendment fulfills the commission's statutory mandate to prescribe the conditions under which sports wagering is conducted in the Commonwealth by defining terms used in 809 KAR Chapter 10.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of entities and persons who may apply for and receive an occupational license for sports

wagering, who may also be affected by the definitions in 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: This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs for compliance with this definitional regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes definitions only. The regulated entities do not have to take actions to comply with definitions.

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

(a) Initially: There will be no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There will be 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: No funding is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is 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 affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16) authorizes the action taken by this 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? This definitional regulation will not generate 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? This definitional regulation will not generate revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will

spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This definitional regulation will not generate any cost savings for regulated entities for 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 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amended After Comments)**

809 KAR 10:002E. Standards for sports wagering.

EFFECTIVE: September 15, 2023

Prior Version –

New Emergency Administrative Regulation: 50 Ky.R.

349

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 230.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering. This administrative regulation establishes standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

Section 1. Authorized and Prohibited Sporting Events and Types of Wagers.

(1) Sporting events that may be wagered upon include those listed in KRS 230.808.

(2) Of those events listed in KRS 230.808, only those categories of sporting events and their types of wager authorized by the racing

commission in accordance with Section 2 of this administrative regulation and posted on the racing commission's Web site may be offered for sports wagering by a licensee.

(3) Notwithstanding any contrary provisions of this regulation, any wager which complies with the following criteria and does not involve any criteria listed in subsection (4) of this section is generally approved and does not need specific approval under Section 2 of this administrative regulation prior to being offered by a licensee:

(a) It is decided based on an outcome or outcomes determined because of a sporting event or sporting events sanctioned by a sports governing body or equivalent that is approved by the racing commission;

(b) It is based on statistical results that can be verified by a data source, box score, aggregation of box scores, or other statistical analysis;

(c) It is based on the performance of a single or group of rostered or otherwise registered participants; and

(d) It is based on the result of an outcome on the field of play.

(4) A licensee shall not offer sports wagering on:

(a) Any electronic sporting event that:

1. Is not sanctioned by an approved sports governing body or equivalent; or

2. Has not been approved by the racing commission pursuant to the regulations established in Section 2 of this administrative regulation;

(b) Any occurrence of injuries or penalties;

(c) Any outcome of replay reviews;

(d) Any disciplinary proceedings against a participant in a sporting event;

(e) Any amateur youth sporting events in which the majority of participants are under the age of eighteen (18) or are competing on behalf of or under the sponsorship of one or more public or private preschools or public or private elementary, middle or junior high, or high schools;

(f) Any sporting event or type of wager in which the outcome has already been determined and is publicly known;

(g) Any dog or horse races; and

(h) Any categories of sporting event or type of wager until the sporting event or type of wager has been approved by the racing commission in accordance with Section 2 of this administrative regulation.

Section 2. Petition for a category of sporting event or type of wager except as provided in Section 1(3) of this administrative regulation, all types of wagers and categories of sporting events shall be reviewed and approved by the racing commission before a Licensee is permitted to offer the wager to the public. A licensee may petition the racing commission for approval of a new category of sporting event or type of wager.

(1) A proposed new sporting event or type of wager may be a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager.

(2) A petition for a proposed new sporting event or type of wager shall be in writing and shall include the following information or material as requested by the racing commission:

(a) The name(s) and address(es) of petitioner(s);

(b) The name of the sporting event or type of wager;

(c) Whether the sporting event or type of wager is a variation of an authorized sporting event or type of wager, a composite of authorized sporting events or types of wager, or a new sporting event or type of wager;

(d) The name of the licensee serving as a sponsor of the new sporting event or type of wager variation petition;

(e) A complete and detailed description of the sporting event or type of wager for which approval is sought, including:

1. A summary of the sporting event or type of wager and the manner in which sports wagers would be placed and winning sports wagers would be determined;

2. A draft of the proposed wagering rules, which includes a description of any technology that would be used to offer the sporting event or type of wager;

3. Any rules or voting procedures related to the sporting event

or type of wager; and

4. Written attestation that the sporting event or type of wager meets the requirements of subsection (3) of this section;

(f) For the approval of an electronic sporting event, complete information about:

1. The proposed location(s) of the electronic sporting event;

2. The video game used for the electronic sporting event, including the key role of game publishers as creators of the underlying video game;

3. The electronic sporting event operator, whether the electronic sporting event operator is approved to host events by the video game publisher, and whether the electronic sporting event operator has any affiliation with the video game publisher; and

4. The manner in which the electronic sporting event is conducted by the electronic sporting event operator, including electronic sporting event rules; and

5. As required by the commission, certification from a third party, such as an electronic sporting event operator or game publisher certifies that the electronic sporting event meets all event integrity requirements of the racing commission;

(g) The name of the sports governing body or equivalent; and

(h) A description of the licensee's policies and procedures regarding event integrity.

(3) The type of wager being requested shall meet the following criteria before the request may be approved:

(a) The outcome can be verified;

(b) The outcome can be generated by a reliable and independent process;

(c) The sporting event generating the outcome is conducted in a manner that ensures sufficient integrity monitoring controls exist so the outcome can be trusted;

(d) The outcome is not likely to be affected by any sports wager placed; and

(e) The sporting event is conducted in conformity with applicable laws.

(4) The racing commission shall approve types of wagers and categories of sporting events in a reasonable time frame. The racing commission will consider the request, all provided materials and any relevant input from the sports governing body or equivalent, or the conductor of the sporting event, prior to authorizing a sporting event or type of wager.

(5) The racing commission may require an appropriate test or experimental period before granting final approval to a sporting event or type of wager. The racing commission may subject any technology that would be used to offer a sporting event or type of wager to such testing, investigation, and approval.

(6) The racing commission may grant, deny, limit, restrict, or condition a request made pursuant to this procedure for reasonable cause, in order to ensure the integrity of sports wagering in the commonwealth. The racing commission may issue an order revoking, suspending, or modifying any approval of a sporting event or type of wager granted under this procedure for reasonable cause.

(7) The racing commission shall notify all licensees of any additions, deletions, or changes regarding authorized sporting events and types of wager. Once a particular category of sporting event or type of wager is approved for its first use, it may be used on multiple events without further approval. The racing commission may issue general approval for licensees to offer wagers on enumerated categories of sporting events and types of wagers.

(8) The racing commission reserves the right to prohibit the acceptance of any sports wagers and may order the cancellation of sports wagers and require refunds on any sporting event or type of wager for which wagering would be contrary to the public policies of the Commonwealth.

(9) If it is determined that a Licensee has offered an unauthorized or prohibited sporting event or type of wager, the licensee shall immediately cancel and refund all sports wagers associated with the unauthorized or prohibited sporting event or type of wager. the licensee shall notify the racing commission promptly after cancelling and refunding the sports wagers. This notice shall include, without limitation, which sports wagers were cancelled or refunded and the reasons for the cancellations or refund.

(10) The racing commission may use any information it

considers appropriate, such as information received from a sports governing body or equivalent, to determine whether to authorize or prohibit wagering on a particular sporting event or type of wager, consistent with industry standards.

(11) The racing commission may restrict, limit, or exclude a certain type, form, or category of sports wagering if the racing commission determines that the restriction, limitation, or exclusion is necessary to ensure the integrity of the licensee.

Section 3. Limitations on Certain Sports Wagering for Good Cause. A sports governing body may submit a request to the racing commission to restrict, limit, or exclude a certain type, form, or category of sports wagering pursuant to KRS 230.808.

(1) The sports governing body shall provide the racing commission with notice of a request to restrict, limit, or exclude a certain type, form, or category of sports wagering, which shall contain information required by the racing commission, including:

(a) The identity of the sports governing body and contact information for at least one specific individual who will be the primary point of contact for questions related to the request;

(b) A description of the sports wagering information, event, or wager type that is the subject of the request; and

(c) Information explaining why granting the request is necessary to protect the integrity of the event, or public confidence in the integrity of the event, that is the subject of the request. This may include information regarding any credible threat to the integrity of the event that is beyond the control of the sports governing body to preemptively remedy or mitigate.

(2) The request shall be sent to the racing commission at least ten (10) calendar days before the particular sporting event. At any time, however, a sports governing body shall report information to the racing commission if it involves allegations of prohibited activity, such as match-fixing, the manipulation of an event, or misuse of inside information.

(3) The racing commission shall request comment from licensees on all requests made under subsection (1) of this section. The request for comment shall include the date by which written comments shall be submitted to the racing commission.

(4) The racing commission shall grant or deny the request pursuant to the criteria established in KRS 230.808.

(5) The racing commission may provisionally grant the request pursuant to the criteria established in KRS 230.808.

(6) The racing commission may reconsider its decision if there is a material change in the circumstances related to the original request.

Section 4. Data Sources for Sports Wagering. A licensee shall report to the racing commission in its sports wagering license application the data source that it uses to resolve sports wagers. The racing commission may disapprove of a data source for any reason in the best interest of sports wagering integrity.

(1) The data source and corresponding data shall be complete, accurate, reliable, timely, and available.

(2) The data source shall be appropriate to settle the category of sporting events and types of wagers for which it is used.

Section 5. Wagering Rules. The licensee shall adopt comprehensive wagering rules, which shall be approved by the racing commission.

(1) The wagering rules shall be conspicuously displayed on the licensee's Web site or mobile application and within the race and sports book location, and copies shall be made readily available to individuals and patrons. Licensees may elect to display copies of comprehensive wagering rules solely in electronic form on sports wagering kiosks, provided such licensees **make hard copies of the wagering rules readily available to individuals and patrons or** display commission-approved short-form house rules in race and sports book locations.

(2) The wagering rules shall comply with GLI-33 Standards and shall specify the amount to be paid on winning wagers and the effect of schedule changes.

(3) The licensee shall not implement any changes or modifications of the practices, procedures, or representations upon

which the approval of wagering rules was based without the prior approval of the racing commission. Failure by a licensee to act in accordance with its approved wagering rules may result in disciplinary action.

Section 6. Tournaments, Contests, and Pools.

(1) No sports wagering tournament, contest, or pool shall be conducted unless the Licensee, before the first time a tournament, contest, or pool type is offered, files written notice with the racing commission of its intent to offer that tournament, contest, or pool type and obtains approval from the racing commission. The licensee may file a master list with the racing commission to satisfy this requirement.

(2) The request shall provide a detailed description of the tournament, contest, or pool type and shall include the rules of the tournament, contest, or pool, the requirements for entry, the entry fees, the rake, and potential payouts. The request shall also indicate whether the proposed type involves a shared liquidity pool available to patrons in Kentucky and other jurisdictions with the prize pool being comprised of entry fees collected from patrons in multiple jurisdictions.

(3) The request shall be submitted to the commission in writing via electronic mail ~~and in hard copy~~. All such requests shall be submitted at least ten (10) business days prior to start date of the tournament, contest, or pool.

(4) Once a licensee receives approval to offer a tournament, contest, or pool type the licensee shall not be required to seek additional approvals from the racing commission for each subsequent type that has only minor variations, such as to the size, number of entries permitted, entry fee, rake, or prize structure.

(5) Each licensee shall maintain a record of each tournament, contest, or pool it offers for five (5) years. These records shall include the following:

- (a) Name or identification of the tournament, contest, or pool;
- (b) The date and time the tournament, contest, or pool occurred or will occur (if known);
- (c) Sporting events and types of wager;
- (d) Rules concerning tournament, contest, or pool play and participation; and
- (e) For each patron:
 - 1. Unique patron identification;
 - 2. Amount of entry fee collected, including any promotional or bonus credits, and the date collected;
 - 3. Patron scorings or rankings; and
 - 4. Amount of payouts paid, including any promotional or bonus credits, and the date paid;
- (f) Total amount of entry fees collected, including any promotional or bonus credits;
- (g) Total amount of payouts paid to patrons, including any promotional or bonus credits;
- (h) Total rake, takeout, or fees collected;
- (i) Funding source amount or amounts comprising the prize pool, such as buy-ins, re-buys, or add-ons;
- (j) Prize structure on payout;
- (k) Methodology for determining winner or winners; and
- (l) The current status of the tournament, contest, or pool, such as whether the event is in-progress, complete, interrupted, cancelled.

(6) The licensee shall be responsible for the rake. At no time shall the calculation resulting from a rake or rake adjustment be negative.

(7) For a contest, tournament, or pool which utilizes shared liquidity available to patrons in Kentucky and other jurisdictions, the rake rate shall be the same for all jurisdictions participating.

Section 7. Acceptance of Wagers.

(1) A licensee shall comply with GLI-33 Standards when accepting wagers.

(2) A licensee shall not set lines or odds or offer wagering propositions designed for the purposes of ensuring that a patron will win a sports wager or a series of sports wagers, unless the lines, odds, or wagering propositions are offered in connection with a promotion or bonus conducted in accordance with Section 9 of this

administrative regulation.

(3) A Licensee shall not accept a sports wager on a sporting event unless a wagering proposition is posted by electronic or manual means.

(4) Sports wagers may only be made by patrons using forms of payment approved by the racing commission including the following:

- (a) Cash;
- (b) Cash equivalents converted to cash;
- (c) Credit or debit cards;
- (d) Electronic funds transfers (EFTs) including automated clearing house and other electronic methods;
- (e) Promotional or bonus credit;
- (f) Winning sports wagering tickets or vouchers; and
- (g) Funds within a sports wagering account.

(5) The licensee shall debit the amount wagered by a patron from their sports wagering account. Wagers shall not be accepted in an amount in excess of a sports wagering account balance.

(6) No licensee shall accept a sports wager from a person on the sports wagering account of or for any other person.

(7) The licensee shall operate and communicate with the sports wagering system in a way that does not provide or facilitate a wagering advantage based on access to information and processing of mobile sports wagers by account holders relative to patrons who wager at a licensed premises.

Section 8. Cancelled or Voided Wagers. Wagers shall not be cancelled or voided without prior approval of the commission, unless the wagers are cancelled or voided by an authorized supervisory employee of the licensee, in accordance with GLI-33 standards and this section.

(1) A licensee shall cancel or void a sports wager under the following circumstances. The licensee need not obtain prior authorization of the racing commission to cancel or void the sports wager under these circumstances. [Cancellation of an otherwise validly placed sports wager by a licensee shall be nondiscretionary. A licensee may cancel or void a sports wager without prior authorization of the racing commission only under the following circumstances:]

(a) Any sports wager where after a patron has placed a sports wager, the sporting event is cancelled, postponed or rescheduled to a different date prior to completion of the sporting event;

1. In the case of a sports wager on a portion of a sporting event, that wager shall be valid when the event is canceled, postponed, or rescheduled if the outcome of the affected portion was determined prior to the cancellation, postponement or rescheduling; or

2. A licensee may establish a timeframe in which an event may be rescheduled or postponed without canceling the sports wager. This timeframe shall be tied to specific sporting events, subject to the approval of the racing commission, and documented in the internal controls;

(b) A change in the venue where a sporting event was scheduled to be held occurs after a patron has placed a sports wager and the licensee cancels or voids the sports wager prior to the commencement of the sporting event;

(c) Any sports wager when an individual participant fails to participate in a sporting event and the outcome of the wager is solely based upon that individual participant's performance;

(d) Any sports wager received for an act, or set of acts, to be performed during a sporting event when such act or acts does not occur and the ability to wager on the non-occurrence of the event was not offered;

(e) Any wager received on whether a team will qualify to participate in post-season competitions when the number of teams allowed to participate in the post-season changes after a patron has placed a wager;

(f) Changes to rules are made by a sports governing body or equivalent regarding the format or number of participants scheduled to participate in a defined phase of a sporting event or that particular phase is not played at all;

(g) Where the licensee has reasonable basis to believe there was an obvious error in the placement or acceptance of the wager, including:

- 1. The wager was placed with incorrect odds;

2. Human error in the placement of the wager; or
3. Any other obvious error specifically defined in the licensee's internal controls.

(h) When a patron requests a sports wager be cancelled or voided prior to the commencement of the sporting event due to an error in communicating the type, amount or parameters of the sports wager; or

(i) When authorized or ordered by the racing commission pursuant to this section.

(2) A licensee may cancel or void a sports wager for a material change in circumstances for a given sporting event or type of wager occurs, provided:

(a) The racing commission approves the material change;

(b) The licensee documents the material change in its internal controls; and

(c) The licensee displays the material change to a patron at the time of placement of the sports wager;

(3) For all circumstances that are not established in subsection (1), a licensee may request the racing commission authorize the cancellation or voiding of all sports wagers of a specific type, kind, or subject. A licensee shall submit its request to cancel or void the sports wager in writing, and such request shall contain the following:

(a) A description of the type, kind, or subject of sports wager the licensee is requesting to cancel or void;

(b) A description of any facts relevant to the request; and

(c) An explanation why cancelling or voiding the sports wager is in the best interests of the Commonwealth or ensures the integrity of the sports wagering industry.

(4) The racing commission shall issue a written order granting or denying the request to cancel or void the sports wager. In determining whether to grant or deny the request, the racing commission shall consider at least the following factors:

(a) Whether the alleged facts implicate the integrity of the sporting event subject to the wager or the sports wagering industry;

(b) Whether the alleged facts implicate possible illegal activity relating to the sporting event or the sports wagering industry;

(c) Whether allowing the wager would be unfair to patrons; or

(d) Whether allowing the wager is contrary to public policy.

(5) No sports wager subject to the request to cancel or void shall be redeemed, cancelled, or voided, until the racing commission or its designee issues an order granting the request to cancel.

(6) If the racing commission or its designee grants the request to cancel or void, the licensee shall make commercially and technologically reasonable efforts to notify patrons of the cancellation or voiding of the sports wager.

(7) The racing commission or its designee has discretion to order all licensees to cancel or void all wagers on a specific sporting event or wagers of a specific type or kind on a specific sporting event. In exercising its discretion, the racing commission shall apply the same factors described in subsection (1).

(8) A patron may request the racing commission or its designee review any sports wager declared cancelled or voided by a licensee. If the racing commission or its designee concludes there is no reasonable basis to believe there was obvious error in the placement or acceptance of the sports wager, the racing commission or its designee may order the licensee to honor the sports wager.

(9) A sports wager shall not be declared canceled or voided without the approval of an authorized supervisory employee of the licensee pursuant to the licensee's internal controls, unless the racing commission or its designee has issued an order requiring the sports wager to be canceled or voided.

(10) If a sports wager is declared canceled or voided, the sports wager shall be refunded to the patron and that amount shall be deducted from the adjusted gross revenue.

Section 9. Promotional or Bonus Wagering. A licensee may conduct sports wagering promotions or bonuses in accordance with this section:

(1) Procedures for the issuance, acceptance, and tracking of promotions or bonuses shall be defined in the licensee's internal controls.

(2) A licensee shall maintain a record of all promotions or bonuses related to sports wagering to facilitate the racing

commission's tracking of promotional or bonus activity, which shall address the following:

(a) Unique ID for each promotion or bonus;

(b) The date and time the promotion or bonus was or is scheduled to be available;

(c) Current balance for promotional or bonus awards;

(d) Total amount of promotional or bonus awards issued;

(e) Total amount of promotional or bonus awards redeemed;

(f) Total amount of promotional or bonus awards expired;

(g) Total amount of promotional or bonus award adjustments;

(h) The current status of the promotion or bonus (active, disabled, decommissioned, etc.); and

(i) The date and time the promotion or bonus was or is scheduled to be decommissioned.

(3) All promotion or bonus rules shall be full, accurate, concise, transparent, and shall not contain misleading information. Promotion or bonus rules shall be readily accessible by the patron and provide unambiguous notice of the:

(a) Date and time the promotion or bonus is active and expires;

(b) Rules of play;

(c) Nature and value of prizes or awards;

(d) Eligibility restrictions or limitations;

(e) Wagering and redemption requirements, which shall include a description of any limitations on such;

(f) How the patron is notified when they have received an award;

(g) Order in which funds are used for wagers;

(h) Eligible events or wagers; and

(i) Cancellation requirements.

(4) Promotions or bonuses shall not be described as free or risk-free if those promotions or bonuses require the patron to incur any loss or risk the patron's own money to use or withdraw winnings from the free wager;

(5) A licensee shall provide a clear and conspicuous method for a patron to cancel their participation in a promotion or bonus that utilizes restricted wagering credits that cannot be cashed out until a wagering requirement or other restriction associated with the credits is met:

(a) Upon request for cancellation, the licensee shall inform the patron of the amount of unrestricted funds that will be returned upon cancellation and the value of restricted wagering credits that will be removed from the sports wagering account; and

(b) If a patron elects to proceed with cancellation, unrestricted funds remaining in a patron's sports wagering account shall be returned according to the rules of a promotion or bonus.

(6) Once a patron has met the terms of a promotion or bonus, a licensee shall not limit winnings earned while participating in the promotion or bonus.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: September 15, 2023

FILED WITH LRC: September 15, 2023

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies standards for sports wagering in Kentucky related to authorized and prohibited sporting events, types of wagers, and data sources for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering. jennifer.wolsing@ky.gov

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the

conduct of sports wagering.” KRS 230.361 states the “racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...” KRS 230.808 lists the categories of sporting events that may be wagered upon and permits a sports governing body to submit a request to the commission to restrict, limit, or exclude a type, form, or category of sports wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering.

(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 amendments to this regulation accomplish three goals. First, the amendments allow licensees to display copies of wagering rules solely in electronic form on sports wagering kiosks, as long as a hard copy of the rules is made readily available or the rules are displayed publicly in short form. Second, the amendments will allow licensees to submit requests for tournaments, contests, and pools by email. Third, the amendment clarifies the regulation’s language to state that a licensee shall cancel or void a sports wager under certain circumstances and does not need KHRC approval to do so.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to establish standards for sports wagering in Kentucky, clarify the regulation, and allow for ease in submitting requests to the KHRC.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to “promulgate administrative regulations to establish standards for the conduct of sports wagering.” KRS 230.361 states the “racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...”

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing standards for sports wagering in Kentucky, including authorized and prohibited sporting events and types of wagers and data sources for sports wagering. This amendment will also make it easier for licensees to make patrons aware of house rules, cancel or void certain wagers, as well as submit requests for tournaments, contests, or pools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Additionally, there are an unknown number of patrons who will choose to engage in sports wagering. Sports Governing Bodies also may be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Sports Governing Bodies must follow the regulatory requirements to request to restrict, limit, or exclude a certain type, form, or category of sports wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks and service

providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering. Sports Governing Bodies will have the opportunity to request the commission restrict certain types, forms, or categories of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817.

(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 regulation does not establish any new fees or increase any current fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly 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 affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16), KRS 230.361, and KRS 230.808 require or authorize the actions taken by this 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? This regulation will not generate 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? This regulation will not generate revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): See answers to (c) and (d) above.

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 expected to generate cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

(c) How much will it cost the regulated entities for the first year? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with the regulations.

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 (+/-): Licensed tracks and service providers offering sports wagering and Sports Governing Bodies may incur costs to ensure compliance with regulations.

Other Explanation:

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amended After Comments)**

809 KAR 10:003E. Technical requirements and oversight.

EFFECTIVE: September 15, 2023

Prior Version –

New Emergency Administrative Regulation: 50 Ky.R. 354

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.805, 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, ... surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.805 establishes requirements for geolocation, technology, and servers. This administrative regulation establishes the technical standards for sports wagering technology within the state, establish testing procedures, as well the handling of changes in sports wagering technology.

Section 1. Sports Wagering Standards. A licensee shall use a sports wagering system to offer, conduct, or operate sports wagering in accordance with applicable laws and these regulations. Only an approved licensee may process, accept, offer, or solicit sports wagers.

(1) The licensee shall operate in conformity with the license conditions issued by the racing commission pursuant to KRS 230.290(3) and GLI-33 Standards.

(2) A sports wagering system shall meet the specifications established in subsection (1) of this section and these regulations. Failure to comply with the approved specifications, internal controls,

or technical specifications may result in disciplinary action by the racing commission.

Section 2. Testing and Certification of Sports Wagering System. Prior to conducting sports wagering, and annually thereafter, the sports wagering system utilized by the licensee shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing. Certification and racing commission approval shall be received prior to the use of any sports wagering system to conduct sports wagering. The licensee is responsible for all costs associated with testing and obtaining such certifications.

(1) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of a system in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the system to either the GLI-33 Standards or, at the discretion of the racing commission, a standard deemed to be the equivalent of the GLI-33 Standards. This alternative certification report must include a list of all critical files and associated signatures and an appendix which lists the differences of any controlled items or processes required to be certified in Kentucky which were not certified in the jurisdiction in which the report was issued. Upon review of the certification report, the racing commission will make a determination on whether to accept the certification or require additional information or documentation or testing.

(2) Unless otherwise authorized by the racing commission, the independent testing laboratory shall be provided access to the sports wagering system's controlled software source code along with the means to verify compilation of such source code. The result of the compiled source code shall be identical to that in the software submitted for evaluation.

(3) If the sports wagering system meets or exceeds the GLI-33 Standards and the commission's regulatory requirements in KAR Title 809, the independent testing laboratory approved by the racing commission shall certify the sports wagering system. Licensees are prohibited from offering sports wagering in Kentucky without such certification.

Section 3. Integration Requirements. The licensee shall be responsible for sports wagering offered by the licensee through other service providers and suppliers, and other licensees where applicable.

(1) The servers and equipment of service providers and suppliers will be considered part of the licensee's sports wagering system and shall comply with these regulations.

(2) The licensee shall guarantee that any integration with the servers and other equipment of another licensee is completed in a way that complies with these regulations.

(3) An independent testing laboratory shall conduct integration testing and certification for each critical server and other equipment with the licensee's sports wagering system prior to its deployment and as requested by the racing commission.

Section 4. Change Management Processes. The licensee shall submit change management processes to the racing commission for approval. The change management processes shall detail evaluation procedures for identifying the criticality of updates and determining which updates shall be submitted to the approved independent testing laboratory for review and certification.

(1) These change management processes shall be:

(a) Developed in accordance with the Kentucky Horse Racing Commission license conditions issued by the commission pursuant to KRS 230.290(3) and the GLI-CMP Guide;

(b) Approved by the racing commission prior to its deployment; and

(c) Available for audit by the racing commission or its designee at any time.

(2) Quarterly change reports shall be issued to the racing commission for review to ensure risk is being assessed according to the change management processes and all documentation for all changes to the critical components are complete.

(3) At least once annually, each product operating under the

approved change management processes shall be fully certified to the specifications established in these regulations and other technical specifications as prescribed by the racing commission and accompanied by formal certification documentation from an independent testing laboratory, the licensee shall be allowed to seek approval for extension beyond the annual approval if hardship can be demonstrated. Granting of a hardship waiver is the sole discretion of the racing commission, upon written proof of good cause by the licensee.

Section 5. Geolocation Requirements. Mobile sports wagers shall be initiated, received, and otherwise placed in the authorized geographic boundaries within the Commonwealth of Kentucky.

(1) The geographic boundaries shall be approved by the racing commission.

(2) The licensee shall use geolocation or geofencing technology pursuant to KRS 230.805 and to monitor and block unauthorized attempts to place sports wagers when an individual or patron is physically outside the authorized geographic boundaries within the Commonwealth of Kentucky at the time the sports wager is placed.

(3) The licensee shall trigger:

(a) A geolocation check prior to the placement of the first wager after login or upon a change of IP address;

(b) Recurring periodic geolocation checks as follows:

1. For static connections, at least every twenty (20) minutes or five (5) minutes if within one (1) mile of the border; and
2. For mobile connections, at intervals to be based on a patron's proximity to the border with an assumed travel velocity of seventy (70) miles per hour or a demonstrated average velocity of a roadway/path, not to exceed twenty (20) minutes.

(4) Mechanisms shall be in place to detect software, programs, virtualization, and other technology that may obscure or falsify the patron's physical location for the purpose of placing sports wagers.

(5) Geolocation field testing shall be completed by a licensed independent test laboratory prior to an operator receiving launch authorization. The geolocation field testing shall, at a minimum, verify the following scenarios:

(a) Attempted Wagering from areas that are not authorized for wagering from multiple locations within varying distances up to the physical border;

(b) Appropriate triggering of re-geolocation frequency for both mobile and wifi connections;

(c) Geolocation check occurs immediately upon change of IP address during a user's session;

(d) Communication packet vulnerabilities including "man in the middle" attacks, replay attacks, and code manipulation are successfully defended against at least two replay attacks scenarios;

1. A network attack in which a valid positive geolocation check is captured and maliciously or fraudulently injected in place of a subsequent check, allowing a patron to wager from outside the State;

2. Potential modification or tampering of the client-side response received by the operator; and

3. Attempts to manipulate location data and remotely control devices from outside of the state. [The geolocation services used by the licensee shall be certified by the approved independent testing laboratory, including, without limitation, applicable field testing as authorized by the commission, before its deployment.]

(6) The racing commission may enter into agreements with other jurisdictions or entities to facilitate, administer, and regulate multi-jurisdictional sports wagering by licensees pursuant to KRS 230.805.

Section 6. Data Security. A licensee's data security policies shall comply with KRS 230.805. Nothing in this section shall preclude the use of internet or cloud-based hosting of such data and information or disclosure as required by Commonwealth or federal law or a court order.

Section 7. Location of Servers, Security, and Cloud Storage. A licensee shall maintain in secure locations in the Commonwealth its

primary servers used to transmit information for purposes of accepting or settling of wagers on a sporting event placed by patrons in the Commonwealth.

(1) The location of all other technology and servers used by a licensee in connection with sports wagering shall be approved by the racing commission and shall be accessible by the racing commission.

(2) The racing commission may approve of the use of internet or cloud-based hosting of duplicate data or data not related to transactional wagering data upon written request of a licensee.

Section 8. Integrity and Security Assessments. Each licensee shall run integrity and security assessments that comply with GLI-33 Standards.

(1) Each licensee shall, within ninety (90) calendar days after commencing operations in Kentucky, and annually thereafter, have integrity and security assessments of the sports wagering system conducted by a third-party contractor experienced in security procedures, including, without limitation, computer security and systems security. The third-party contractor shall be selected by the licensee and shall be subject to approval of the racing commission. Such integrity and security assessments shall include a review of the following:

- (a) Network vulnerability;
- (b) Application vulnerability;
- (c) Application code;
- (d) Wireless security;
- (e) Security policy and processes;
- (f) Security and privacy program management;
- (g) Technology infrastructure and security controls;
- (h) Security organization and governance; and
- (i) Operational effectiveness.

(2) The scope of the integrity and security assessments is subject to approval of the racing commission and shall include the following:

(a) A vulnerability assessment of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, the sports wagering systems, and applications transferring, storing, or processing Personally Identifiable Information or other sensitive information connected to or present on the networks;

(b) A penetration test of all digital platforms, Web sites, mobile applications, internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, the sports wagering systems, and applications are susceptible to compromise;

(c) A review of the firewall rules to verify the operating condition of the firewall and the effectiveness of its security configuration and rule sets performed on all of the perimeter firewalls and the internal firewalls;

(d) A security control assessment conducted in accordance with the provisions outlined in the racing commission's regulations, including the technical security controls specified within the GLI-33 Standards, and with generally accepted professional standards approved by the racing commission.

(e) If a cloud service provider is in use, an assessment performed on the access controls, account management, logging and monitoring, and over security configurations of their cloud tenant; and

(f) An evaluation of information security services, payment services such as financial institutions and payment processors, geolocation services, and any other services which may be offered directly by the sports wagering licensee or involve the use of service providers.

(3) To qualify as a third-party contractor, the third-party contractor shall demonstrate to the commission's satisfaction, at minimum, the following qualifications:

(a) Relevant education background or in other ways provide relevant qualifications in assessing sports wagering systems;

(b) Certifications sufficient to demonstrate proficiency and expertise as a network penetration tester by recognized certification boards, either nationally or internationally; and

(c) At least three (3) years' experience performing integrity and security assessments on sports wagering systems; and

(4) The third-party contractor's full security audit report containing the overall evaluation of sports wagering in terms of each aspect of security shall be provided to the racing commission no later than thirty (30) calendar days after the assessment is conducted and shall include the following:

- (a) Scope of review;
- (b) Name and company affiliation, contact information, and qualifications of the individual or individuals who conducted the assessment;
- (c) Date of assessment;
- (d) Findings;
- (e) Recommended corrective action, if applicable; and
- (f) The licensee's response to the findings and recommended corrective action.

(5) It is acceptable to reuse the results of prior assessments within the past year conducted by the same third-party contractor when the testing was conducted pursuant to accepted industry standards as approved by the commission, such as International Organization for Standardization ("ISO")/International Electrotechnical Commission ("IEC") standards, the NIST Cybersecurity Framework ("CSF"), the Payment Card Industry Data Security Standards ("PCI-DSS"), or the equivalent. Such reuse shall be noted in the third-party contractor's security audit report. This reuse option does not include any critical components of a sports wagering system unique to the Commonwealth which will require fresh assessments.

(6) If the third-party contractor's security audit report recommends corrective action, the licensee shall provide the racing commission with a remediation plan and any risk mitigation plans which detail the Licensee's actions and schedule to implement the corrective action.

(a) The remediation and risk mediation plans shall be presented within a time period prescribed by the racing commission, which shall be based on at least the following factors:

- 1. The severity of the problem to be corrected;
- 2. The complexity of the problem to be corrected; and
- 3. The risks associated with the problem to be corrected.

(b) The commission may require suspension of operations until implementation of any critical corrective action(s).

(c) Once the corrective action has been taken, the licensee shall provide the racing commission with documentation evidencing completion.

Section 9. Quarterly Vulnerability Scans. Internal and external network vulnerability scans shall be run at least quarterly and after any significant change to the sports wagering system or network infrastructure.

(1) Testing procedures shall include protocol verifying that four (4) quarterly internal and external scans took place in the past twelve (12) months and that re-scans occurred until all "Medium Risk" (CVSS 4.0 or Higher) vulnerabilities were resolved or accepted via a formal risk acceptance program approved by the racing commission. Internal scans should be performed from an authenticated scan perspective. External scans can be performed from an uncredentialed perspective.

(2) The quarterly scans can be performed by either a qualified employee of the licensee or a qualified third-party contractor selected by the licensee and subject to approval of the racing commission.

(3) Verification of scans shall be submitted to the racing commission on a quarterly basis and within thirty (30) calendar days of running the scan. The scan verifications shall include a remediation plan and any risk mitigation plans for those vulnerabilities not able to be resolved. The commission may impose disciplinary action in the event of critical unresolved vulnerabilities or vulnerabilities that continue unabated.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: September 15, 2023

FILED WITH LRC: September 15, 2023 at 10:00 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel,
Kentucky Horse Racing Commission, 4063 Iron Works Parkway,

Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (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 technical standards for sports wagering systems and establishes testing procedures to ensure the integrity of the systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish technical standards for sports wagering systems in the Commonwealth of Kentucky and a process by which the systems can be tested and certified by independent laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, .. surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.805(g) establishes requirements for geolocation, technology, and servers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing standards for sports wagering in Kentucky, including technical standards for sports wagering systems.

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

(a) How the amendment will change this existing administrative regulation: This proposed amendment will make two changes. First, the amendment clarifies that integration testing and certification shall be conducted only on each critical server, rather than on each server. Second, the amendment adds language specifying that geolocation field testing shall include certain common prelaunch scenarios where geolocation issues can compromise the integrity of the gaming system.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure that testing and certification requirements are not overly broad and to ensure that geolocation field testing includes certain common scenarios that could compromise the integrity of the gaming system.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data, .. surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. ... to ensure the integrity of the system of sports wagering." KRS 230.805(g) establishes requirements for geolocation, technology, and servers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for sports wagering in Kentucky, including technical standards for sports wagering systems. The amendment clarifies the regulation to ensure that testing is not overbroad and that field tests truly ensure wagering integrity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may

be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed tracks and service providers offering sports wagering must observe the regulatory requirements when offering wagers. Independent testing labs must certify that sports wagering systems comply with the technical standards of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed tracks, independent testing laboratories, and service providers will benefit from having clear standards for sports wagering. Kentuckians will benefit from the effective administration of sports wagering.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the labs to test and certify their systems.

(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 regulation does not establish any new fees or increase any current fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly 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 affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16), KRS 230.805, and KRS 230.811(2) authorize the actions taken by this 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? This regulation will not generate 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? This regulation will not generate revenue during subsequent years.

(c) How much will it cost to administer this program for the first

year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: 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? This administrative regulation is not expected to generate cost savings for the regulated entities during the first year.

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

(c) How much will it cost the regulated entities for the first year? In the first year, licensed tracks offering sports wagering and service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers may incur additional costs to ensure compliance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? In subsequent years, service providers will likely incur costs to have their systems tested and certified by independent labs. Licensed tracks and service providers offering sports wagering may incur additional costs to ensure compliance with the regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Expenditures are uncertain. See (c) and (d) above.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Emergency Amended After Comments)

809 KAR 10:004E. Sports wagering accounts.

EFFECTIVE: September 15, 2023

Prior Version –

New Emergency Administrative Regulation: 50 Ky.R.

358

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361(2), 230.805

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This administrative regulation establishes sports

wagering account requirements, dormant and closed account requirements, and responsible gaming limits.

Section 1. Sports Wagering Account Requirements. Patrons shall register their sports wagering accounts with the licensee pursuant to KRS 230.805. Licensees shall adopt account registration policies pursuant to KRS 230.805. All account registration policies shall be subject to approval by the commission. Nothing in this section shall be interpreted to prohibit the licensee from accepting anonymous wagers by a sports wagering device within the licensed premises.

(1) An account shall only be established in the name of an account holder who is a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership, or any other entity.

(2) A licensee shall collect the following personally identifiable information from each account holder through the sports wagering system:

(a) The account holder's full legal name;

(b) The account holder's date of birth;

(c) The account holder's Social Security number, or the last four (4) digits of the Social Security number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and

(d) All data required by KRS 230.805.

(3) During the sports wagering account registration process, the licensee shall:

(a) Deny patrons the ability to register for account if they submit a birth date which indicates that they are an underage person; and

(b) Inform the patron on the account application which information fields are "required," which are not, and what will be the consequences of not filling in the required fields.

(4) During the sports wagering account registration process, patrons shall:

(a) Agree to the terms and conditions and privacy policies of the licensee;

(b) Acknowledge that they are prohibited from:

1. Transferring or selling an account or account balance;

2. Using any technology that may obscure or falsify the account holder's physical location for the purpose of placing sports wagers;

3. Allowing any unauthorized person to access or use their account; and

4. Any form of collusion, cheating, or other unlawful activity.

(c) Consent to the monitoring and recording of the use of their account by the licensee and the racing commission;

(d) Attest that:

1. The account holder meets all eligibility requirements to place a wager with a licensee in this Commonwealth; and

2. The personally identifiable information the account holder is providing to open the account is accurate.

(e) Authorize the provision of notices and other required communications either through a designated mobile or other interface or to an electronic mail address designated by the account holder.

(5) A licensee shall maintain an electronic patron file, which shall include the following for each sports wagering account:

(a) Unique sports wagering account ID and username (if different);

(b) The information indicated in subsection (2) of this section to register an account holder and create the account;

(c) The date and method of identity verification:

1. Where applicable, the licensee shall maintain the document number of the government-issued identification credential examined and its date of expiration.

2. If a government-issued identification credential is not required for registration, the electronic record that details the process used to confirm the account holder's identity shall be recorded.

(d) The date of account holder agreement to the terms and conditions and privacy policies;

(e) Previous sports wagering accounts, if any, and reason for de-activation;

(f) The date and method from which the sports wagering account was registered;

(g) The date and time a sports wagering account is accessed by any person;

(h) The IP address at which a sports wagering account is accessed by any person;

(i) A history of financial transactions, including deposits, withdrawals, and account adjustments;

(j) Account details and current balance, including any incentive credits. All restricted wagering credits and unrestricted funds that have a possible expiration shall be maintained separately; and

(k) The current status of the sports wagering account (e.g., active, dormant, closed, suspended, excluded).

(6) The following information maintained as part of the electronic patron file shall be stored in encrypted form:

(a) The account holder's government identification number, or portion(s) thereof;

(b) The account holder's previous and current password(s), PIN(s), or other authentication credential(s); and

(c) The account holder's previous and current debit instrument number(s), credit or debit card number(s), bank account number(s) or other personal financial information.

(7) A licensee may allow the account holder to update authentication credentials, registration information and the account used for financial transactions. A multi-factor authentication process shall be employed for these purposes.

Section 2. Age and Identity Verification. The licensee shall comply with KRS 230.805. The licensee shall also adopt commercially and technologically reasonable policies and procedures to verify and authenticate the age and identity of each account holder.

(1) Only eligible persons may create a sports wagering account, deposit funds, or participate in sports wagering. The licensee shall make commercially and technologically reasonable efforts to deny the ability to create a sports wagering account, deposit funds, or participate in sports wagering to any prohibited patron. This section shall not be construed to prevent a restricted patron from creating a sports wagering account and depositing funds into such an account even if they are prohibited from placing certain wagers.

(2) At the time of account establishment, the licensee shall employ electronic verification with respect to the following:

(a) All information required by KRS 230.805, and

(b) Each account holder's government identification number or portion(s) thereof.

(3) The electronic verification information shall be verified by a commission-approved independent reference company, or through an alternative process approved by the commission.

(4) The following data shall be verified before account holders can initiate activity including deposits, withdrawals, and wagering:

(a) Items that require an exact match:

1. The account holder's last name;

2. The account holder's date of birth;

3. The account holder's government identification number, or portion(s) thereof.

(b) Items that permit flexible match for common interpretations of names and abbreviations used in the address fields[1],including the account holder's first name.

[1. The account holder's first name; and

2. The account holder's principal residential address.]

(5) Reasonable measures shall be taken to ensure the person providing identity information is truly the owner of the identity before an account holder can initiate any activity including deposits, withdrawals, and wagering. One (1) of the following methods, or another method approved by the racing commission, is required:

(a) Correctly answer three dynamic knowledge-based questions compiled from public and private data such as public records, credit reports, marketing data and other recorded facts;

(b) Verification that the account holder's phone number or e-mail address match the information provided by the account holder; or

(c) Valid government issued identification credential.

(6) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(7) A licensee shall use commercially available and

demonstrable standards to confirm that an individual attempting to create a sports wagering account is not prohibited from placing a wager.

(8) A licensee shall periodically re-verify an account holder's identification upon reasonable suspicion that the account holder's identification has been compromised.

Section 3. Limitation to One (1) Account per Account Holder. A Licensee shall use all commercially and technologically reasonable means to ensure that each individual is limited to one (1) sports wagering account with that licensee in the Commonwealth.

(1) The licensee shall implement procedures to terminate all accounts of any account holder that establishes or seeks to establish more than one (1) username or more than one (1) account, whether directly or by use of another person as proxy.

(2) Such procedures may allow an account holder that establishes or seeks to establish more than one (1) username or more than one (1) account to retain one (1) account provided that the licensee investigates and makes a good-faith determination that the account holder's conduct was not intended to obtain a competitive advantage.

(3) This section shall not be construed to prevent an individual from holding other sports wagering accounts in other jurisdictions.

(4) If an operator licensee has contracted with multiple service provider licensees to offer mobile sports wagering on its behalf, individuals may have one (1) sports wagering account with each service provider licensee offering mobile sports wagering.

Section 4. Terms and Conditions and Privacy Policies for Sports Wagering Accounts. All terms and conditions and privacy policies for sports wagering accounts shall be included in the internal controls of the licensee and shall be readily accessible to the account holder before and after registration and noticed when materially updated.

(1) All terms and conditions for sports wagering accounts shall address all aspects of the licensee, including:

(a) A statement that only individuals located in the authorized geographic boundaries within the Commonwealth of Kentucky can participate in sports wagering;

(b) A statement that prohibited patrons are prohibited from participating in sports wagering;

(c) Advice to the account holder to keep their authentication credentials (e.g., password and username) secure;

(d) All processes for dealing with lost authentication credentials, forced password changes, password strength and other related items as required by the racing commission;

(e) Full explanation of all rules applicable to dormant sports wagering accounts, including the conditions under which an account is declared dormant and what actions will be undertaken on the account once this declaration is made;

(f) Actions that will be taken on the account holder's pending wagers placed prior to any exclusion or suspension, including the return of all wagers, or settling all wagers, as appropriate;

(g) Information about timeframes and limits regarding deposits to and withdrawals from sports wagering accounts, including a clear and concise explanation of all fees, if applicable; and

(h) Statements indicating that the licensee has the right to:

1. Refuse to establish a sports wagering account for what it deems good and sufficient reason;

2. Refuse deposits to or withdrawals from sports wagering accounts for what it deems good and sufficient reason; and

3. Unless there is a pending investigation or dispute, suspend or close any sports wagering account at any time pursuant to the terms and conditions between the licensee and the account holder.

(2) All privacy policies for sports wagering accounts shall address all aspects of the personally identifiable information protection, including:

(a) The personally identifiable information required to be collected;

(b) The purpose and legal basis for personally identifiable information collection and of every processing activity for which consent is being sought;

(c) The period in which the personally identifiable information is stored, or, if no period can be possibly set, the criteria used to set

this;

(d) The conditions under which personally identifiable information may be disclosed;

(e) An affirmation that measures are in place to prevent the unauthorized or unnecessary disclosure of the personally identifiable information; and

(f) The identity and contact details on the licensee who is seeking the consent.

Section 5. Account Access.

(1) The sports wagering system shall use authentication credentials, such as a username (or similar) and a password or a secure alternative means to assure that only the account holder has access to the sports wagering account. Allowable authentication credentials are subject to the discretion of the racing commission as necessary. The requirement does not prohibit the option for more than one (1) method of authentication being available for an account holder to access their account.

(2) If the sports wagering system does not recognize the authentication credentials when entered, an explanatory message shall be displayed to the account holder which prompts the account holder to try again. The error message shall be the same regardless of which authentication credential is incorrect.

(3) Account holders shall be given the option to use a multi-factor authentication process when accessing their sports wagering account. In addition, a multi-factor authentication shall be employed for the retrieval or reset of an account holder's forgotten or lost authentication credentials.

(4) Current account balance information, such as any restricted wagering credits and unrestricted funds, and transaction options shall be available to the account holder once authenticated. All restricted wagering credits and unrestricted funds that have a possible expiration shall be indicated separately.

(5) The sports wagering system shall support a mechanism that allows for an account to be locked if suspicious activity is detected, such as three (3) consecutive failed access attempts in a thirty (30) minute period. A multi-factor authentication process shall be employed for the account to be unlocked.

Section 6. Financial Transactions.

(1) Licensees shall provide the account holder written confirmation or denial of every financial transaction initiated on sports wagering accounts, including:

(a) The type of transaction (deposit or withdrawal);

(b) The transaction value; and

(c) For denied transactions, a descriptive message, if appropriate and available, as to why the transaction did not complete as initiated.

(2) A sports wagering account may be funded using acceptable form of payment or advance deposit method which shall produce a sufficient audit trail for verification of the source of the wagers.

(a) Payment or advance deposit methods for funding sports wagering accounts may be funded by forms or methods approved by the racing commission including:

1. All forms of payment authorized in KRS 230.805;

2. Cash equivalents converted to cash;

3. Electronic funds transfers (EFTs), such as automated clearing house and other electronic methods;

4. Promotional or bonus credit;

5. Winnings;

6. Adjustments made by the licensee with documented notification to the account holder; and

7. Any other form of payment authorized by the commission.

(b) The sports wagering account shall be credited for any deposit in accordance with the internal controls as submitted by the licensee and approved by the racing commission.

(c) For credit or debit cards, and EFTs, the account holder may be liable for any charges imposed by the transmitting or receiving licensee and the charges may be deducted from the account holder's sports wagering account.

(3) Where financial transactions are conducted through EFT, the licensee shall have security measures and controls to prevent EFT fraud. A failed EFT attempt is not considered fraudulent if the

account holder has successfully performed an EFT on a previous occasion with no outstanding chargebacks. Otherwise, the licensee shall do the following:

(a) Temporarily block the account holder's sports wagering account for investigation of fraud after five (5) consecutive failed EFT attempts within a ten (10) minute period. If there is no evidence of fraud, the block may be vacated; and

(b) Suspend the account holder's sports wagering account after five (5) additional consecutive failed EFT attempts within a ten (10) minute period.

(4) An account holder shall be allowed to withdraw the funds maintained in their sports wagering account, whether the account is open or closed, except as otherwise provided in these regulations, or any other applicable state or federal laws.

(a) A licensee shall employ a mechanism that can detect and prevent any withdrawal activity initiated by an account holder that would result in a negative balance of the sports wagering account.

(b) A licensee shall not allow a sports wagering account to be overdrawn unless caused by payment processing issues outside the control of the licensee.

(c) A licensee shall honor the account holder's request to withdraw funds within five (5) business days after the request, unless the conditions established in paragraph (d) of this subsection are met.

(d) The licensee may decline to honor an account holder's request to withdraw funds only if the licensee believes in good faith that the account holder engaged in either fraudulent conduct or other conduct that would put the licensee in violation of the act and these regulations. In such cases, the licensee shall do the following:

1. Suspend the account holder's sports wagering account and provide notice to the account holder; and

2. Conduct its investigation in a reasonable and expedient fashion, providing the account holder additional written notice of the status of the sports wagering account every 10th business day starting from the day the original notice was provided to the account holder.

(e) For purposes of this subsection, a request for withdrawal is considered honored if it is processed by the licensee notwithstanding a delay by a payment processor, credit or debit card issuer, or the custodian of a financial account.

(5) All adjustments to sports wagering accounts for amounts of \$500 or less shall be periodically reviewed by supervisory personnel as established in the licensee's internal controls. All other adjustments shall be authorized by an authorized supervisory personnel of the licensee before being entered.

Section 7. Account Information. Upon request of the account holder, the licensee shall provide a statement detailing account activity for the past year, including wagers, deposit amounts, withdrawal amounts, and bonus or promotion information.

Section 8. Patron-Imposed Limits. A licensee shall allow an account holder to limit the amount of money that may be deposited into an account and spent through an account.

(1) A deposit limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of money an account holder may deposit into their sports wagering account during a particular period of time.

(2) A wager limit shall be offered on a daily, weekly and monthly basis and shall specify the maximum amount of account holder funds that may be put at risk during a particular period of time.

(3) Any decrease to these limits shall be effective immediately or at the point in time (e.g., next login, next day) that was clearly indicated to the account holder. Any increase to these limits shall become effective only after the time period of the previous limit (e.g., day, week, month, etc.) has expired and the account holder reaffirms the requested increase.

Section 9. Breaks from Wagering.

(1) A licensee shall enable an account holder to request a break from wagering for a period of time the account holder specifies, which shall not be less than seventy-two (72) hours, by submitting a request to the licensee through its Web site or mobile application.

(2) The licensee shall provide to an account holder who requests a break from wagering information concerning:

(a) Available resources addressing addiction and compulsive behavior;

(b) How to close an account and restrictions on opening a new account during the break;

(c) Requirements to reinstate an account at the end of the break;

(d) The ability to enroll in the voluntary self-exclusion program and a link to such site; and

(e) How the licensee addresses bonuses or promotions and account balances during and after the break, and when the account holder closes their sports wagering account.

Section 10. Suspension and Restoration of Sports Wagering Accounts.

(1) A sports wagering account may be placed into a suspended mode by the Licensee for any reason, not otherwise prohibited by state or federal law, at the sole discretion of the licensee.

(2) A sports wagering account shall be placed into a suspended mode by the licensee under any of the following conditions:

(a) When the account holder requests a break from wagering under subsection (1) of this section;

(b) When required by the racing commission;

(c) If the licensee determines it lacks sufficient information to verify the age and eligibility of the account holder;

(d) Upon a determination by a licensee that an account holder:

1. Has provided any false or misleading information in connection with the opening of the account or has engaged in collusion, cheating or other unlawful conduct;

2. Is barred from placing sports wagers in the Commonwealth of Kentucky; or

3. Is a prohibited patron; or

(e) When the licensee has evidence that indicates any of the following:

1. Illegal activity including providing any false or misleading information in connection with the opening of the account, or engaging in collusion, cheating, or other unlawful conduct;

2. A negative sports wagering account balance; or

3. A violation of the terms and conditions has taken place on an account holder's sports wagering account.

(3) When a sports wagering account is in a suspended mode, the licensee shall:

(a) Prevent the account holder from placing sports wagers;

(b) Prevent the account holder from depositing funds unless the account is suspended due to having a negative sports wagering account balance but only to the extent the sports wagering account balance is brought back to zero dollars;

(c) Prevent the account holder from withdrawing funds from their sports wagering account, unless the licensee acknowledges that the funds have cleared, and that the reason(s) for suspension would not prohibit a withdrawal;

(d) Prevent the account holder from making changes to their sports wagering account;

(e) Prevent the removal of the sports wagering account from the sports wagering system;

(f) Prominently display to the account holder that the sports wagering account is in a suspended mode, the restrictions placed on the sports wagering account, and any further course of action needed to remove the suspended mode; and

(g) Remove the account holder from any advertising or marketing distribution lists.

(4) A sports wagering account in a suspended mode may be restored for any of the following reasons:

(a) Upon completion of the break from wagering established by the account holder under subsection (1) of this section;

(b) If authorized by the racing commission;

(c) When the account holder is no longer a prohibited patron; or

(d) When the licensee has lifted the suspended status.

(5) If the sports wagering account is terminated in accordance with this section, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared, and that the reason(s) for termination would not prohibit a withdrawal.

Section 11. Account Closure.

(1) A sports wagering system shall provide a conspicuous and readily accessible method for an account holder to close their sports wagering account through the account management or similar page or through the licensee's customer support team.

(2) Upon closure, any funds remaining in the sports wagering account shall be refunded to the account holder, provided that the licensee acknowledges that the funds have cleared and no racing commission investigation regarding the funds is pending.

Section 12. Dormant Accounts. Any sports wagering account with no log-in activity for at least two (2)[three (3)] years may be closed by the licensee.

(1) Within two (2) weeks following the closure of an account due to inactivity, the licensee shall notify the account holder by both electronic mail and certified mail to his or her last-known physical address. The notification shall clearly inform the account holder of his or her right to withdraw the funds within a period of at least six (6) months following the account's closure date.

(2) The notification shall include the balance of funds due to the account holder and enumerate reasonable methods through which the account holder can request these funds. Such means shall include electronic transfer or check, but may include additional methods. In following the procedure provided by the licensee in this notice, the account holder shall be able to elect to withdraw these funds. The notification shall clearly state any processing fees that will be deducted from the account balance upon the disbursement of funds. Such processing fees shall be approved by the commission in internal controls if exceeding three (3) percent of the funds disbursed.[when a sports wagering account is closed, the licensee shall issue any funds, less processing fees, within five (5) business days to the account holder's last-known address.]

Section 13. Test Accounts. A licensee may establish test accounts to be used to test the various components and operation of a licensee pursuant to the internal controls, which shall address the following:

(1) The procedures for issuing funds used for testing, including the identification of who may issue the funds and the maximum amount of funds that may be issued;

(2) The procedures for assigning each test account for use by only one (1) individual, unless each user's activities are separately logged;

(3) The maintenance of a record for all test accounts, to include when they are active, to whom they are issued, and the employer of the individual to whom they are issued;

(4) The procedures for auditing testing activity by the licensee to ensure the accountability of funds used for testing and proper adjustments to adjusted gross revenue; and

(5) The procedures for authorizing and auditing out-of-state test activity.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: September 15, 2023

FILED WITH LRC: September 15, 2023

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the sports wagering account requirements and responsible gaming limits, and also establishes requirements for dormant and closed accounts.

(b) The necessity of this administrative regulation: This

regulation is necessary to provide specific rules concerning the establishment and maintenance of sports wagering accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This regulation proscribes the conditions relating to the establishment and maintenance of sports wagering accounts, which includes patrons' account registration, identity verifications, and wager placements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of statutes by ensuring that sports wagering providers properly establish and maintain patrons' sports wagering accounts.

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

(a) How the amendment will change this existing administrative regulation: This proposed amendment makes two changes to the regulation. First, the amendment removes the necessity for a licensee to verify an account holder's physical address, because the addresses present within verifiable databases are not routinely updated with a user's true address in real time. Second, the amendment eliminates the 5-day timeframe for returning funds to players with dormant accounts and removes the obligation to use a player's last-known address. Instead, a licensee shall notify a patron within 2 weeks after the patron's account becomes dormant. The patron will be given at least 6 months to withdraw his or her funds.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary because addresses present within verifiable databases are not routinely updated with a user's true address in real time, and because 5 days is insufficient time to return funds to players with dormant accounts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) requires the commission to "promulgate administrative regulations governing and regulating sports wagering, including administrative regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer." KRS 230.805(3) establishes additional requirements for registration of sports wagering patrons' accounts, such as account registration and wager placement. This amendment proscribes the conditions relating to the establishment and maintenance of sports wagering accounts, which includes the establishment and maintenance of patrons' accounts.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of statutes by ensuring that sports wagering providers properly establish and maintain patrons' sports wagering accounts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will choose to set up a sports wagering account.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed tracks that obtain a sports wagering license, as well as service providers, must observe the

regulatory requirements when allowing patrons to use their sports wagering accounts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain. Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, tracks will benefit from having clear standards for patrons' sports wagering accounts. Kentuckians will benefit because people under 18 will be precluded from placing sports wagers. Sports wagering patrons will benefit from secure accounts that only allow authorized financial transactions. Patrons will also benefit from being able to request a break from wagering if needed.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is required for the implementation and enforcement of this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly 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 affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16), KRS 230.361(2), and KRS 230.805 require or authorize the actions taken by this 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? This sports wagering account regulation will not generate revenue during the first full 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 sports wagering account regulation will not generate revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will

spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with hackers or phishing attacks.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation may generate cost savings in establishing regulatory criteria for patron account confidentiality and security. This could prevent costs associated with successful hacking or phishing attacks.

(c) How much will it cost the regulated entities for the first year? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

(d) How much will it cost the regulated entities for subsequent years? Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

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

Cost Savings (+/-): This regulation may prevent costs associated with successful hacking or phishing attacks.

Expenditures (+/-): Tracks may incur the costs of contracting with service providers to manage patrons' accounts.

Other Explanation: None.

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

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Emergency Amended After Comments)

809 KAR 10:006E. Audit and internal control standards.

EFFECTIVE: September 15, 2023

Prior Version –

New Emergency Administrative Regulation: 50 Ky.R. 369

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.811(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for "maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering." KRS 230.811(2) requires tracks and service providers to "comply with the standards established by the racing commission. .. to ensure the integrity of the system of sports wagering." This administrative regulation establishes internal control standards, including administration and accounting controls, and specifies certain duties to permit access to the racing commission of information and records, record retention, and reporting requirements.

Section 1. Internal Controls. Before beginning operations, a licensee shall submit its administrative and accounting controls, in detail, in a system of internal controls for racing commission review and approval. The racing commission or its designee may perform any inspection necessary in order to determine conformance with the approved internal controls.

(1) Amendments to any portion of the internal controls shall be submitted to the racing commission for approval. If, within thirty (30) calendar days the racing commission has not approved, denied, or otherwise provided written notice, a licensee may implement the amended internal controls as submitted with the racing commission retaining its authority to require further amendment, approval, or denial.

(a) The racing commission may approve, deny, or require a revision to the amendment to the internal controls. If the licensee is notified of a required revision, the licensee shall address the revision within fifteen (15) calendar days, unless otherwise required by the commission.

(b) If the racing commission requests additional information, clarification, or revision of an amendment to the internal controls and the licensee fails to satisfy the request within thirty (30) calendar days after the racing commission submits the request, the racing commission shall consider the amendment denied and it cannot be implemented or, if previously implemented, the licensee shall cease implementation of that amendment within fifteen (15) calendar days. If the licensee subsequently wants to pursue the amendment, it shall resubmit the request along with the additional information previously requested by the racing commission.

(2) In an emergency, the licensee may temporarily amend their internal controls. The racing commission or its designee shall be notified immediately that an emergency exists before the licensee temporarily amends its internal controls due to an emergency. The licensee shall submit the temporary emergency amendment of the internal controls to the racing commission or its designee within twenty-four (24) hours of the amendment. The submission shall include the detailed emergency procedures that will be implemented and the time period the emergency procedures will be temporarily in place. Any concerns the racing commission has with the submission shall be addressed with the licensee promptly.

(3) The internal controls shall include a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of KAR Title 809, including the following:

(a) Reliable accounting controls, including the standardization of forms and definition of terms to be used in the sports wagering operations;

(b) Reporting controls which shall include policies and procedures for the timely reporting of standard financial and statistical information in accordance with this regulation;

(c) Access controls which include, as their primary objective, the safeguarding of company assets;

(d) Tables of organization, which shall provide for:

1. A system of personnel and chain of command which permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

2. The segregation of functions that are incompatible with separation of duties, so that no employee is in a position both to commit an error or to perpetrate a fraud and to conceal the error or fraud in the normal course of their duties;

3. Supervisory positions which permit the authorization or supervision of necessary transactions at all relevant times; and

4. Areas of responsibility which are not so extensive as to be impractical for one (1) person to monitor.

(e) A jobs compendium detailing job descriptions, chains of command, and lines of authority for all personnel engaged in the operation of sports wagering. The licensee shall maintain and update the jobs compendium on a regular basis, but at least annually;

(f) An infrastructure and information security program; and

(g) All wagering procedures and practices specified within the GLI-33 Standards.

(4) To the extent a service provider is involved in or provides any

of the internal controls required in this Chapter, the licensee's internal controls shall document the roles and responsibilities of the service provider and shall include procedures to evaluate the adequacy of and monitor compliance with the service provider's internal controls.

(5) The licensee shall stamp or otherwise mark each page of the internal controls submitted to the racing commission with the word "CONFIDENTIAL" if the licensee does not believe the material submitted should be subject to public disclosure.

(6) If a licensee intends to utilize any new technology not identified in its initial proposal, it shall submit the changes to its internal controls to incorporate the use of any such new technology to the racing commission for approval.

(7) If the racing commission determines that the internal controls of the licensee do not comply with the requirements of KAR Title 809, the racing commission shall notify the licensee in writing. Within fifteen (15) calendar days after receiving the notification, the licensee shall amend its internal controls accordingly and shall submit, for racing commission approval, a copy of the written internal controls, as amended, and a description of any other remedial measure taken.

Section 2. Information Security Responsibilities. The internal controls shall ensure that an information security program is effectively implemented, and information security function responsibilities are effectively allocated.

(1) The licensee shall implement, maintain, and comply with a comprehensive information security program, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personally identifiable information of individuals who place a sports wager with the licensee.

(2) The licensee's information security program shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations, and the sensitivity of the personally identifiable information owned, licensed, maintained, handled, or otherwise in the possession of the licensee.

(3) A licensee's information security forum, data privacy committee, or other similar organizational structure comprised of senior managers shall be formally established to monitor and review the information security program to ensure its continuing suitability, adequacy, and effectiveness, maintain formal minutes of meetings, and convene at least every six months.

(4) A licensee's information security department shall exist that is responsible for developing a security strategy in accordance with the overall operation. The information security department will subsequently work with the other departments to implement the associated action plans. It shall be involved in reviewing all tasks and processes that are necessary from the security perspective for the licensee, including the protection of information and data, communications, physical, virtual, personnel, and overall business operational security.

(5) The licensee's information security department shall report to no lower than executive level management and shall be independent of the IT department with regard to the management of security risk.

(6) The licensee's information security department shall have the competencies and be sufficiently empowered and shall have access to all necessary resources to enable the adequate assessment, management, and reduction of risk.

(7) The licensee's chief security officer or equivalent head of the information security department shall be a full member of the information security forum and be responsible for recommending information security policies and changes.

Section 3. Accounting Records. licensees shall maintain complete, accurate, and legible records of all financial transactions for five (5) years, including transactions pertaining to revenues, expenses, assets, liabilities, and equity in conformance with generally accepted accounting principles. The licensee's financial transaction reports shall be in compliance with GLI-33 Standards, unless otherwise permitted by the commission.

~~(1) [The accounting records shall be maintained according to GLI-33 Standards, unless otherwise permitted by the~~

commission.]The detailed subsidiary records shall include:

- (a) Detailed general ledger accounts identifying all revenue, expenses, assets, liabilities, and equity;
 - (b) A record of all investments, advances, loans, and accounts receivable balances due the establishment;
 - (c) A record of all loans and other accounts payable;
 - (d) A record of all accounts receivable written off as uncollectible;
 - (e) Journal entries prepared;
 - (f) Tax work papers used in preparation of any state or federal tax return if applicable;
 - (g) Records supporting the accumulation of the costs for complimentary services and items. A complimentary service or item provided to individuals in the normal course of a sports wagering business shall be recorded in an amount based upon the full retail price normally charged for the service or item or as is otherwise consistent with generally accepted accounting principles; and
 - (h) Records required by the internal controls.
- (2) The licensee shall maintain all records supporting the adjusted gross revenue for five (5) years.
- (3) If a licensee fails to maintain the records used by it to calculate the adjusted gross revenue, the racing commission may compute and determine the amount upon the basis of an audit conducted by the racing commission using available information.

Section 4. Financial Audits. Upon application, and annually thereafter, each licensee shall submit to the racing commission, within ninety (90) calendar days of the licensee's fiscal year end, its financial audit for that fiscal year.

(1) The licensee shall operate in conformity with financial audit conditions established in the license conditions issued by the racing commission pursuant to KRS 230.290(3).

(2) Upon request by the commission, the licensee shall submit pro forma statements that present projected or estimated financial performance, assets, and liabilities. These pro forma statements shall include:

- (a) Pro forma balance sheet: A projected or estimated balance sheet outlining the entity's assets, liabilities, and equity at a specific point in time;
- (b) Pro forma income statement: A projected or estimated income statement presenting the entity's anticipated revenues, expenses, and net income for a specific period;
- (c) Pro forma cash flow statement: A projected or estimated cash flow statement demonstrating the expected cash inflows and outflows of the entity over a specific period;
- (d) Pro forma statement of retained earnings: A projected or estimated statement reflecting changes in the entity's retained earnings over a specific period, considering projected net income, dividends, and other adjustments; and
- (e) Notes for financial statements: Explanatory notes providing additional information and disclosures related to the pro forma statements, including significant assumptions, methodologies used, and any other relevant details.

(3) If audited financial statements are not available, the licensee shall provide audited financial statements of its parent company and the licensee's unaudited financial statements, which document the licensee's financial performance, assets, and liabilities, including:

- (a) A balance sheet;
- (b) An income statement;
- (c) A cash flow statement;
- (d) A statement of retained earnings; and
- (e) Notes for financial statements.

(4) The pro forma statements shall be clearly labeled as unaudited and based on management's estimates and assumptions. These statements may serve as temporary financial documentation until audited financial statements become available.

(5) The financial audit shall be performed in accordance with generally accepted accounting principles by an independent certified public accountant currently authorized to practice in Kentucky, and shall contain the opinion of the independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles.

(6) The racing commission shall determine the number of copies

of audits or reports required under this procedure. The audits or reports shall be received by the racing commission or postmarked no later than the required filing date.

(7) The reporting year-end of the licensee is December 31 of each year, unless otherwise approved by the racing commission.

Section 5. Retention, Storage, and Destruction of Records. The internal controls shall include a records retention schedule, and provisions related to the storage and destruction of records that incorporates the following provisions, without limitation:

(1) Each licensee shall maintain, in a place secure from theft, loss, or destruction, adequate records of its business and accounting operations.

(2) A licensee shall make the records available to the racing commission, upon request, within a time provided for by the racing commission. A licensee shall retain the records for not less than five (5) years.

(3) A licensee shall keep and maintain, in a manner and form approved by the racing commission, accurate, complete, and legible records of any books, records, or documents pertaining to, prepared in, or generated by, the licensee.

(4) A licensee shall organize and index all required records in a manner that enables the racing commission to locate, inspect, review, and analyze the records with reasonable ease and efficiency.

(5) A licensee shall notify the racing commission in writing at least sixty (60) calendar days prior to the scheduled destruction of any record required to be retained in accordance with this section, if within the five (5) year record retention requirement. Such notice shall list each type of record scheduled for destruction, including a description sufficient to identify the records included; the retention period; and the date of destruction. If documents are to be destroyed in the normal course of business in accordance with document retention policies previously set forth in the internal controls approved by the racing commission, no notice to the racing commission shall be required.

(6) The racing commission may prohibit the destruction of any record required to be retained in accordance with this section by so notifying the licensee in writing within forty-five (45) calendar days of receipt of the notice of destruction pursuant to subsection (5) or within the specified retention period. Such original record may thereafter be destroyed only upon notice from the racing commission, or by order of the racing commission upon the petition of the licensee, or by the racing commission on its own initiative.

(7) The licensee may use the services of a disposal company for the destruction of any records required to be retained in accordance with this section.

Section 6. Reserve Requirement.

(1) The internal controls shall include a plan to maintain and protect sufficient funds to conduct sports wagering at all times through a reserve in the amount necessary to ensure the security of funds held in sports wagering accounts and the ability to cover the outstanding sports wagering liability.

(a) The reserve shall be in the form of cash, cash equivalents, payment processor receivables, payment processor reserves, an irrevocable letter of credit, a bond, or a combination thereof.

(b) The reserve shall be not less than the greater of \$25,000 or the sum of the following amounts:

- 1. The daily ending cashable balance of all sports wagering accounts;
- 2. Pending withdrawals;
- 3. Amounts accepted by the licensee on sports wagers whose outcomes have not been determined; and
- 4. Amounts owed but unpaid on winning sports wagers.

(c) Amounts available to patrons for wagering that are not redeemable for cash may be excluded from the reserve computation.

(2) A licensee shall have access to all sports wagering account and transaction data to ensure the amount of its reserve is sufficient. Unless otherwise directed by the racing commission, a licensee shall file a monthly attestation with the racing commission, which states that funds have been safeguarded under this procedure.

(3) The racing commission may audit a licensee's reserve at any time and may direct a licensee to take any action necessary to ensure the requirements of this section are met.

Section 7. Risk Management Framework. A licensee shall implement a risk management framework. This framework may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall contain a description of the risk management framework, including:

- (a) Automated and manual risk management procedures;
- (b) Employee management, including access controls and segregation of duties;
- (c) Information regarding identifying and reporting fraud and suspicious conduct;
- (d) Controls ensuring regulatory compliance;
- (e) Description of Anti-Money Laundering (AML) compliance standards;
- (f) Controls for accepting wagers and issuing pay outs in excess of \$10,000;
- (g) Controls for accepting multiple wagers from one patron in a 24-hour cycle, including a process to identify patron structuring of wagers to circumvent recording and reporting requirements;
- (h) Description of all software applications that comprise the sports wagering system;
- (i) Description of all types of sports wagers available to be offered by the licensee;
- (j) Description of the procedures to prevent past posting of wagers;
- (k) Description of the procedures to prevent individuals from placing wagers as agents or proxies for other individuals; and
- (l) Description of all integrated third-party platforms.

(2) A licensee shall file with the racing commission a report of any error that occurs in offering an event or wager or if an unapproved sporting event or type of wager is offered to the public.

Section 8. Taxation Requirements.

(1) The internal controls shall ensure compliance with all Internal Revenue Service (IRS) requirements and the licensee shall provide for the withholding or reporting of income tax of patrons as required by applicable state or federal law.

(2) The licensee shall disclose potential tax liabilities to patrons at the time of award of any sports wagering payouts in excess of limits set by the IRS. Such disclosures will include a statement that the obligation to pay applicable taxes on payouts is the responsibility of the patron and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability. Upon written request, the licensee shall provide patrons with summarized tax information on sports wagering activities.

Section 9. Reports of Suspicious Transactions.

(1) A transaction requires reporting under the terms of this section if it is conducted or attempted, by, at, or through a licensee, and involves or aggregates to at least \$5,000 in funds or other assets, and the licensee knows, suspects, or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part:

- (a) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation or of the racing commission.
- (b) Is designed, whether through structuring or other means, to evade any requirements of these regulations or of any other regulations promulgated under the Bank Secrecy Act;
- (c) Has no business or apparent lawful purpose or is not the sort in which the particular patron would normally be expected to engage, and the licensee knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(d) Involves use of the licensee to facilitate criminal activity.

(2) A licensee may also file a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(3) The report shall be filed no later than thirty (30) calendar days after the initial detection by the licensee of facts that may constitute a basis for filing such a report. In situations involving violations that require immediate attention, the licensee shall immediately notify the racing commission in addition to timely filing a report.

(4) A licensee shall maintain a copy of any report filed and the original or business record equivalent of any supporting documentation for a period of five (5) years from the date of filing the report. Supporting documentation shall be identified, and maintained by the licensee as such, and shall be deemed to have been filed with the report. A licensee shall make all supporting documentation available to the racing commission and any appropriate law enforcement agencies upon request.

(5) Unless otherwise required by this Chapter, other law, or court order, licensee and its directors, officers, employees, or agents who file a report pursuant to this regulation shall not notify any person involved in the transaction that the transaction has been reported. Any report filed with the racing commission is confidential and may be disclosed by the racing commission in the necessary administration of their duties and responsibilities under the Act or as otherwise required by law or court order.

Section 10. Anti-Money Laundering (AML) Monitoring. The internal controls shall implement AML procedures and policies that adequately address the risks posed by sports wagering for the potential of money laundering and terrorist financing. The AML procedures and policies shall provide for the following:

- (1) Up to date training of employees in the identification of unusual or suspicious transactions;
- (2) Assigning an individual or individuals to be responsible for all areas of AML by the licensee including reporting unusual or suspicious transactions;
- (3) Use of any automated data processing systems to aid in assuring compliance; and
- (4) Periodic independent tests for compliance with a scope and frequency as required by the racing commission. Logs of all tests shall be maintained for five (5) years.

Section 11. Integrity Monitoring and Suspicious Behavior. A licensee shall implement an integrity monitoring system. This solution may be provided in-house by a unit capable of performing this function with appropriate segregation of functions and reporting duties, or by a third-party entity.

(1) The internal controls shall include provisions for a licensee to report to the racing commission as soon as practicable, but in no event longer than forty-eight (48) hours after discovery:

- (a) Any information regarding irregularities in volume or changes in odds **identified as abnormal wagering activity[that could signal suspicious activities which were identified];**
- (b) Any information relating to criminal or disciplinary proceedings commenced against the licensee in connection with its operations;
- (c) Any information relating to the following, which shall also be reported to the relevant sports governing **body or[bodyor]** equivalent:

- 1. Abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events;
- 2. Any potential breach of the internal rules and codes of conduct pertaining to sports wagering of a relevant sports governing body or equivalent, to the extent the licensee has actual knowledge of the potential breach; and
- 3. Any other conduct that corrupts a sports wagering outcome of a sporting event or events for purposes of financial gain, including match-fixing; or
- (d) Any information relating to suspicious or illegal wagering activities, including the use of funds derived from illegal activity, the placement of wagers to conceal or launder funds derived from illegal activity, the use of agents to place wagers, and the use of false identification in placing wagers.

(2) A licensee shall maintain the confidentiality of information provided by a sports governing body or equivalent for purposes of investigating or preventing the conduct described in subsection (1)(d), unless disclosure is required by the Act, the racing commission, or other law or court order, or unless the sports governing body or equivalent consents to its disclosure in writing.

(3) A licensee receiving a report of suspicious or illegal wagering activity shall be permitted to suspend wagering on sporting events or types of wager related to the report, and may place a hold on suspicious wagers while investigating, but may only cancel or void sports wagers related to the report after receiving written approval from the racing commission or its designee.

(4) Upon request by the racing commission or its designee, a licensee shall provide remote, read-only access and the necessary software and hardware for the racing commission to evaluate or monitor the sports wagering system. If requested, the licensee shall provide the racing commission with remote access or other approved mechanism, which shall provide:

- (a) All reports of abnormal wagering activity;
- (b) Whether the abnormal wagering activity was subsequently determined to be suspicious or illegal wagering activity;
- (c) All reports deemed suspicious or illegal wagering activity at the outset; and
- (d) The actions taken by the licensee according to its integrity monitoring system.

(5) Nothing in this section shall require a licensee to provide any information in violation of federal, state or local law or regulation, including laws and regulations relating to privacy and personally identifiable information.

(6) A licensee shall maintain records of all integrity monitoring services and activities, including all reports and suspicious or illegal wagering activity and any supporting documentation, for a minimum of five (5) years after a sporting event occurs. The licensee shall disclose these records to the racing commission upon request.

(7) The racing commission may require a licensee to provide any hardware or software necessary to the racing commission, or to an independent testing laboratory approved by the racing commission, for evaluation of the licensee's sports wagering offering or to conduct further monitoring of sports wagering data.

Section 12. Personally Identifiable Information Security.

(1) Any information obtained in respect to a patron, including confidential information, personally identifiable information and authentication credentials for a sports wagering account, shall be collected in compliance with the licensee's privacy policies set forth in its internal controls. Both personally identifiable information and the sports wagering account funds shall be considered as critical assets for the purposes of risk assessment.

(2) No employee or agent of the licensee shall divulge any confidential information or personally identifiable information related to a patron, the placing of any wager, or any other sensitive information related to the operation of the licensee without the consent of the patron, except as required by this section, the racing commission, and as otherwise required by state or federal law.

(3) The internal controls shall include procedures for the security and sharing of confidential information, personally identifiable information, funds in a sports wagering account, and other sensitive information as required by the racing commission, including:

- (a) The designation and identification of one or more employees having primary responsibility for the design, implementation, and ongoing evaluation of such procedures and practices;
- (b) The procedures to be used to determine the nature and scope of all information collected, the locations in which such information is stored, and the storage devices on which such information may be recorded for purposes of storage or transfer;
- (c) The measures to be utilized to protect information from unauthorized access; and
- (d) The procedures to be used if a breach of data security has occurred, including required notification to the racing commission.

Section 13. Complaints Pertaining to Sports Wagering. The internal controls shall provide procedures for receiving, investigating, responding to, and reporting on complaints by patrons.

(1) When a patron makes a complaint, the licensee shall promptly issue a complaint report, setting out:

- (a) The name of the complainant;
- (b) The nature of the complaint;
- (c) The name of the persons, if any against whom the complaint was made;
- (d) The date of the complaint; and
- (e) The action taken or proposed to be taken, if any, by the licensee.

(2) All complaints received by a licensee from a patron and the licensee's responses to complaints shall be retained for at least five (5) years and made available to the racing commission within ten (10) business days of any request by the racing commission.

(3) A licensee shall investigate and attempt to resolve all complaints with the patron.

Section 14. Prohibition of Credit Extension. The internal controls shall include controls relating to not allowing the acceptance of a sports wager or deposit of funds into a sports wagering account that is derived from the extension of credit by affiliates or agents of the licensee. For purposes of this section, credit shall not be deemed to have been extended where, although funds have been deposited into a sports wagering account, the licensee is awaiting actual receipt of such funds in the ordinary course of business.

(1) Credit providers such as small amount credit contracts shall not be advertised or marketed to patrons.

(2) A patron shall not be referred to a credit provider to finance their sports wagering activity.

(3) Personally identifiable information related to a patron shall not be provided to any credit provider.

Section 15. Prohibited Patrons. The internal controls shall include commercially and technologically reasonable measures to prevent access to sports wagering by any prohibited patrons at a licensed premises and online via website or mobile application.

(1) If a licensee detects, or is notified of, an individual suspected of being a prohibited patron who had engaged or is engaging in prohibited sports wagering, the licensee shall use reasonable measures to verify whether the individual is prohibited or not.

(2) If the licensee is able to establish, by reasonable measures, that the individual is prohibited, the licensee shall cancel a sports wager.

Section 16. Layoff Wagers. The internal controls shall include procedures for a licensee to accept layoff wagers placed by other licensees and place layoff wagers with other licensees for the purpose of offsetting sports wagers.

(1) The licensee placing a layoff wager shall inform the licensee accepting the wager that the wager is being placed by a licensee and shall disclose their identity.

(2) A licensee may decline to accept a layoff wager in its sole discretion.

(3) Layoff wagers shall be reported to the racing commission promptly.

Section 17. Reports of Licensees. **The internal controls shall delineate the Licensee's capacity to prepare standard reports related to sports wagering revenues, wagering liability, patron information, payouts or any combination thereof. The Internal Controls shall be amended to include any additional reports required by the commission to audit sports wagering activity to ensure that all reports are prepared in accordance with the technical conditions prescribed by the commission or its designee. The Internal Controls shall provide the licensee's process for timely filing of the reports prepared pursuant to this section.** ~~The internal controls shall detail the licensee's ability to prepare reports considered necessary by the racing commission including reports supporting adjusted gross revenue, wagering liability, and payouts. The licensee shall timely file with the commission any additional reports required by the Act or by any regulation prescribed by the racing commission.~~ Any information provided under this section is confidential and proprietary and is exempt from disclosure unless

disclosure is required by this Chapter, by other law, or by court order.

Section 18. Racing Commission Access to Sports Wagering Data. The internal controls shall detail the controls to assure that all sports wagering data the racing commission requires to be maintained under the Act or KAR Title 809 is appropriately segregated and controlled to prevent unauthorized access.

(1) Licensees shall provide the racing commission with access to all such data, upon request and with reasonable notice.

(2) Licensees shall retain such data for a minimum of five (5) years.

Section 19. Independent Audit of Internal Controls. Licensees shall have their internal controls independently audited at least once every two (2) years with the results documented in a written report. This includes internal controls conducted by an affiliate on behalf of the licensee. Reports shall be maintained and available to the racing commission for five (5) years.

(1) Such independent audits may be conducted by the racing commission, or a third-party contractor approved by the racing commission. The racing commission may, in its discretion, approve the licensee to complete an internal audit, if the licensee uses an independent auditing team to serve as a third-party contractor for use in completing this audit.

(2) The racing commission or third-party contractor shall be responsible for auditing the licensee's compliance with the Act and KAR Title 809, the Wagering Procedures and Practices specified within the GLI-33 Standards, and the internal controls.

(3) Documentation shall be prepared to evidence all independent audit work performed as it relates to the requirements of this section, including all instances of noncompliance.

(4) Independent audit reports shall include objectives, procedures and scope, findings and conclusions, and recommendations.

(5) Independent audit findings shall be reported to management. Management shall be required to respond to the independent audit findings and the stated corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the final independent audit report.

(6) Follow-up observation and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by the independent audits. The verification shall be performed within six (6) months following the date of notification.

(7) It is acceptable to reuse the results of prior audits conducted within the audit period by the same third-party contractor in another sports wagering jurisdiction. Such reuse shall be noted in the audit report. This reuse option does not include any internal controls unique to the Commonwealth, which will require new audits.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: September 15, 2023

FILED WITH LRC: September 15, 2023

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer Wolsing

(a) What this administrative regulation does: This administrative action establishes auditing and internal control standards for sports wagering operators and service providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards to ensure that sports wagering operators and service providers have internal protocols in place to ensure the integrity of their sports wagering systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related

to sports wagering, including standards for “maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data,...surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering.” KRS 230.811(2) requires tracks and service providers to “comply with the standards established by the racing commission . . . to ensure the integrity of the system of sports wagering.” KRS 230.260(16) requires the commission to “promulgate administrative regulations to establish . . . integrity requirements for sports wagering and related data.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing clear, objective auditing and internal control standards for sports wagering systems providers in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: There are three suggested amendments to this regulation. First, the KHRC will remove a redundant reference to GLI-33 standards in Section 3. Second, the KHRC will specify that licensee shall report information regarding volume irregularities or changes in odds that are identified as abnormal wagering activity, rather than just instances of volume irregularities or changes in odds. Third and finally, the regulation will be amended to specify that internal controls shall state the licensee's capacity to prepare standard reports related to sports wagering revenues, wagering liability, and/or patron information.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to remove redundancy, to clarify when licensees should report abnormal wagering activity, and specify what types of reports should be included in internal controls.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260(16)(a) requires the racing commission to promulgate regulations to establish standards related to sports wagering, including standards for “maintaining and auditing books and financial records, securely maintaining records of bets and wagers, integrity requirements for sports wagering and related data,...surveillance and monitoring systems, and other reasonable technical criteria related to conducting sports wagering.” KRS 230.811(2) requires tracks and service providers to “comply with the standards established by the racing commission . . . to ensure the integrity of the system of sports wagering.” KRS 230.260(16) requires the commission to “promulgate administrative regulations to establish . . . integrity requirements for sports wagering and related data.”

(d) How the amendment will assist in the effective administration of the statutes: These amendments will effectively administer statutes because they will remove redundancy, clarify when licensees should make certain reports, and give licensees clarity on what should be included in their internal controls.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected by this regulation. Independent testing labs that certify these systems will be impacted by this regulation. Additionally, there is an unknown number of patrons who will choose to engage in sports wagering. Sports Governing Bodies also may be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Operators and service providers offering sports wagering must observe the regulatory requirements for audit

and internal control. Sports Governing Bodies will receive information from Licensees based on the licensees' compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are uncertain, but licensed tracks and service providers offering sports wagering are likely to incur costs to comply with the regulations, including the cost of paying independent labs to certify their systems. Sports Governing Bodies may incur costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from having clear standards for internal control and auditing related to sports wagering. Kentuckians will benefit from the effective administration of sports wagering and the assurance that sports wagering system providers are required to have internal measures to ensure the functionality and integrity of their systems. Sports Governing Bodies will receive knowledge of suspicious wagers and can react to ensure the integrity of their respective sports.

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

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. The service providers will be required to pay the laboratories to test and certify their systems.

(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 regulation does not establish any new fees or increase any current fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply similarly to all similarly situated entities in an equal manner.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: 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? This administrative regulation is not expected to generate cost savings for the regulated entities during the first year.

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

(c) How much will it cost the regulated entities for the first year? Licensees will likely incur costs to have their systems tested and certified by independent labs.

(d) How much will it cost the regulated entities for subsequent years? Licensees will likely incur costs to have their systems tested and certified by independent labs.

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 (+/-): Please see the answers to (c) and (d) above.

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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.

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 affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16), KRS 230.811(2), and KRS 230.260(16) authorize the actions taken by this 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? This regulation will not generate 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? This regulation will not generate revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, September 12, 2023)

GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, September 12, 2023)

32 KAR 1:020. Statement of spending intent and appointment of campaign treasurer.

RELATES TO: KRS 121.015, 121.160(1), 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes[grants] the Registry ~~[-the power]~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(18) defines "form" to mean [an-"an online Web page or/ef] an electronic document designed to capture, validate, and submit data for processing to the registry.["] KRS 121.160(1) requires candidates [as part of their filing papers] to designate a campaign treasurer. KRS 121.180(1) requires[permits] certain candidates to use an electronic form if requesting[to request] an exemption from reporting to the Registry when they file for office. This administrative regulation establishes the Web page from which candidates designate their treasurers and state their spending intents.[a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.]

Section 1. Appointment of Campaign Treasurer. Candidates shall designate campaign treasurers, as required by KRS 121.160(1), or state whether they will act as their own campaign treasurers prior to beginning to campaign for each primary, regular, or special election by using the Kentucky Election Finance Management System found on the Registry's Web site at https://kref.ky.gov.[The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates for the appointment of a campaign treasurer under KRS 121.160(1).]

Section 2. Optional Request for Reporting Exemption. Candidates shall state whether they are exempt from filing campaign finance reports, as required by KRS 121.180(1)(a), by stating their spending intents for each primary, regular, or special election by using the Kentucky Election Finance Management System found on the Registry's Web site at https://kref.ky.gov.

[(1)] [The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(a).]

[(2)] [The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(b).]

[Section 3.] [Incorporation by Reference.]

[(1)] [The "Statement of Spending Intent and Appointment of Campaign Treasurer Form" reference KREF-004, revised 11/2017 is incorporated by reference.]

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

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

32 KAR 1:030. Campaign finance statements.[Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.]

RELATES TO: KRS 121.015, 121.180, 141.071
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(18) defines "form" to mean [an-"an online Web page or/ef] an electronic document designed to capture, validate, and submit data for processing to the registry.["] This administrative regulation establishes[specifies] the Web page from which [forms to be used by] candidates, slates of candidates, contributing organizations, and committees shall file campaign finance reports electronically as required by KRS 121.180. It establishes[false-specifies] how an executive committee of a political party determines whether it files annually or semiannually under KRS 121.180(2)(c)[committees, and incorporates those forms by reference].

Section 1. All[The following] candidates, slates of candidates, contributing organizations, and committees shall file the reports required by KRS 121.180 using the Kentucky Election Finance Management System found on the Registry's Web site at https://kref.ky.gov.[on the forms incorporated by reference in this administrative regulation:]

[(1)] [Candidate campaign funds, gubernatorial slate campaign funds, political issues committees, and candidate authorized campaign committees who register an intent to raise or spend more than \$3,000 or actually receive contributions or make expenditures in excess of \$3,000; and]

[(2)] [All permanent committees, caucus campaign committees, inaugural committees, contributing organizations, unauthorized campaign committees, and political party executive committees regardless of the amount of contributions or expenditures.]

Section 2. If an executive committee of a political party has ~~ten thousand dollars (\$10,000)]~~ or more in its campaign account fund at any time during the twelve (12) [-]month period before July 1, it shall make the campaign finance reports required by KRS 121.180(2)(c) semiannually. In making this determination, the committee shall include any funds received from income tax checkoff contributions in accordance with KRS 141.071(2), whether or not those funds are kept in an account separate from other campaign funds. A committee that does not have more than ~~ten thousand dollars (\$10,000)]~~ in the twelve (12) [-]month period before July 1 shall use the Kentucky Election Finance Management System found on the Registry's Web site at https://kref.ky.gov to certify to the registry that it is not required to file a campaign finance report by July 31.[Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] ["Candidate/Slate of Candidates Election Finance Statement", reference KREF-006, revised 08/2018;]

[(b)] ["Executive Committee/ Caucus Campaign Committee Election Finance Statement", reference KREF-006/EC, revised 08/2018;]

[(c)] ["Unauthorized Campaign Committee/ Political Issues Committee Election Finance Statement", reference KREF-006/UCC-IC, revised 08/2018;]

~~[(d)] ["Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 08/2018; and]~~

~~[(e)] ["Permanent Committee (PAC)/ Contributing Organization Election Finance Statement", reference KREF 006/PAC-CO, revised 08/2018;]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]]~~

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, September 12, 2023)**

32 KAR 1:046. Repeal of 32 KAR 1:045 and 32 KAR 1:070.

RELATES TO: KRS 121.172(8), 121.180(2)(b), (c), ~~[121.180](9)~~
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.172(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes[grants] the Registry ~~[the authority-]~~ to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.172(1) requires the Registry to promulgate administrative regulations to implement provisions permitting a state executive committee of a political party to establish a building fund account. KRS 121.172(8) requires a state executive committee to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis. KRS 121.180(2)(b) and (c) requires a state executive committee of a political party that has established a building fund account under KRS 121.172 to make full report to the Registry, to be received by the registry within five (5) days after the close of each calendar quarter. The registry is required to[must] repeal ~~[administrative regulations-]~~ 32 KAR 1:045 and 32 KAR 1:070, because the forms identified in the current regulations no longer exist as separate documents, but are now incorporated into other filings into Kentucky Election Finance Management System, the registry's electronic filing system, and are included in 32 KAR 1:020 and 32 KAR 1:030.

Section 1. The following administrative regulations are hereby repealed:

(1) 32 KAR 1:045. Election Finance Statement – State Executive Committee Building Fund; and

(2) 32 KAR 1:070. Waiver From Filing Candidate Election Finance Statement.

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(As Amended at ARRS, September 12, 2023)**

32 KAR 1:050. Political organization registration.

RELATES TO: KRS 121.015(3), (4), 121.170, 121.180
STATUTORY AUTHORITY: KRS 121.015(3), (4), 121.120(1)(g), (4), 121.170(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate

administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(3)(b)5. requires the Registry to determine by administrative regulation what constitutes a minor political party for purposes of committee registration. As defined by[in] KRS 121.015(4), a "contributing organization" is subject to contribution limits and required to file periodic campaign finance reports[reports of campaign finances] under KRS 121.180(6). KRS 121.015(18) defines "form" to mean an-"/an online Web page or/of] an electronic document designed to capture, validate, and submit data for processing to the registry.["] This administrative regulation defines "minor political party" and "executive committee" [for purposes of Kentucky's Campaign Finance Regulation (KRS Chapter 121);] and establishes[specifies] the Web page that committees and contributing organizations shall use for registration.[the form to be used for registration by committees and contributing organizations, and incorporates the form by reference.]

Section 1. Definitions.

(1) "Executive committee" means an organizational unit or affiliate recognized within the document governing a political party, that raises and spends funds to promote political party nominees, and performs other activities commensurate with the day-to-day operation of a political party, including voter registration drives, assisting candidate fundraising efforts, holding state conventions or local meetings, and nominating candidates for local, state, and federal office.

(2) "Minor political party" means an association, committee, organization, or group having constituted authority for its governance and regulation, which nominates or selects a candidate for election to any federal or statewide-elected state office in Kentucky, whose name appears on an election ballot as the candidate of the association, committee, organization, or group, and does not have a recognized caucus campaign committee within the Kentucky House or Senate, as defined by[in] KRS 121.015(3)(b)1.-4.

(3) "Political organization" means any committee or contributing organization, as those terms are defined by[in] KRS 121.015(3) and (4).

Section 2. Political Organization Registration. Campaign committees, caucus campaign committees, political issues committees, permanent committees, inaugural committees, executive committees, and contributing organizations shall register using the Kentucky Election Finance Management System found on the Registry's Web site at https://kref.ky.gov.[The "Political Organization Registration" form, KREF 010, revised 01/2019 shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, permanent committees, inaugural committees, executive committees, and contributing organizations.]

[Section 3.] [Incorporation by Reference.]

[(1)] ["Political Organization Registration" form, KREF 010, revised 01/2019, is incorporated by reference.]

[(2)] [This material may inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

GENERAL GOVERNMENT CABINET
Department of Military Affairs
(As Amended at ARRS, September 12, 2023)

106 KAR 4:020. Commonwealth of Kentucky Military Burial Honor Guard Trust Fund and Military Burial Honor Guard.

RELATES TO: KRS 36.390, 36.392, 36.394, 36.396, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 36.390(3), 36.394(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 36.392(1) establishes the Military Burial Honor Guard Trust Fund. KRS 36.390(3) requires the Kentucky Department of Military Affairs to implement and administer this fund and to implement a state burial honor guard program that complies with, and supplements, the federal, United States Department of Defense, Military Funeral Honors Program as established by 10 U.S.C. 1491. This administrative regulation establishes the requirements, policies, procedures, and operational criteria for the Military Burial Honor Guard Program.

Section 1. Definitions.

(1) "Casualty Assistance Office" means the designated United States Department of Defense element for civilian funeral directors to request military funeral ~~honor~~**[honors]** support.

(2) "Eligible veteran" means a Kentuckian who has met the requirements of Section 3 of this administrative regulation.

(3) "Fund" means the Commonwealth of Kentucky ~~[f]~~ Military Burial Honor Guard Trust Fund established by KRS 36.392(1) to appropriate monies for the Military Burial Honor Guard Program activities required by KRS 36.390 through 36.396.

(4) "Military funeral honors authorized provider" means any veteran's service organization or other military or civil entity that has been trained to Department of Defense military funeral honors standards recognized by the Department of Defense to provide military funeral honors.

(5) "Selected reserve" means military units and individuals in each reserve component that participates in paid ~~[f]~~ federal training periods and serves on paid ~~[f]~~ federal active duty for training and includes members and former members of the Kentucky National Guard.

(6) "Military Burial Honor Guard Program Coordinator" means the representative designated by the Adjutant General of Kentucky to implement the Military Burial Honor Guard Program.

(7) "Military Burial Honor Guard Program" means the program, funded by the Military Burial Honor Guard Trust Fund, to render military funeral honors to eligible Kentucky veterans.

Section 2. Military Burial Honor Guard Trust Fund.

(1) Money derived from the fund shall be expended for an approved program that:

(a) Appropriates monies for activities of the Military Burial Honor Guard Program for costs incurred or deemed necessary by the Department of Military Affairs;

(b) Provides for honorable military burials for Kentuckians who have served their state and nation in the armed forces;

(c) Encourages and assists veteran's organizations and other authorized military funeral honors providers; **or**

(d) Works with public and private sectors to honor and recognize the service and sacrifice of veterans.

(2) Fundraising.

(a) The Fund may accept appropriated monies, gifts, donations, or grants from an individual, a corporation, or government entity.

(b) Gratuitous donations may be accepted by the Fund.

1. Checks shall be made out to the Kentucky State Treasurer.

2. Checks shall be sent to the Adjutant General of Kentucky, Attention: Military Burial Honor Guard Coordinator, Building 100, Boone National Guard Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168.

(3) Incidental costs. Program encumbrances and disbursements shall be approved by the Executive Director, Office of Management and Administration, Department of Military Affairs, if the funeral honor detail meets the standards and requirements set forth in this administrative regulation. In addition, program expenditures shall

not be made for a commodity or service otherwise provided by an existing federal or state entitlement or program.

Section 3. Eligibility.

(1) Kentucky Veterans shall be eligible for military honors if the Veteran:

(a) Served the state and nation in the armed forces and was discharged or released under conditions other than dishonorable by means of an honorable or under honorable conditions (general) discharge;

(b) Completed at least one (1) enlistment as a member of the selected reserve or, in the case of an officer, completed the initial obligated service as a member of the selected reserve;

(c) Was a member or former member of the selected reserve, to include the Kentucky National Guard;

(d) Was discharged before completion of the person's initial enlistment as a member of the selected reserve or, in the case of an officer, period of initial obligated service as a member of the selected reserve, for a disability incurred or aggravated in line of duty;

(e) Died while a member of the active component or selected reserve; or

(f) Retired from an active component or selected reserve.

(2) An individual ineligible to receive military honors shall include individuals:

(a) Who have, at any time, been discharged or released from military service with a:

1. Dishonorable discharge;

2. Bad conduct discharge;

3. Dismissal from service awarded by a court-martial;

4. Other than under honorable conditions; **or**

5. Resignation by an officer for the good of the service in lieu of court-martial, which results in a discharge of under other than honorable conditions.

(b) Convicted of a federal or state capital crime not commuted by the Governor or the President;

(c) Convicted of a federal or state crime causing the person to:

1. Be a tier III sex offender for purposes of the Sex Offender

Registration and Notification Act; and

2. Sentenced to a minimum of life in prison; or

3. Be sentenced to a period of Ninety-nine (99) years or more; and

4. Have a conviction that has not been commuted.

(d) Who avoided a trial or conviction for crimes established in paragraphs (b) or (c) of this subsection due to death or flight to avoid prosecution.

Section 4. Military Burial Honor Guard Program.

(1) Policy.

(a) The Military Burial Honor Guard Program shall be the burial honor guard program required by KRS 36.392(1) to render military funeral honors and respect to Kentuckians who faithfully defended the Commonwealth of Kentucky and the nation in the armed services.

(b) A Kentucky veteran shall be entitled to military burial honors under the Military Burial Honors Program if:

1. The veteran is eligible under the criteria in Section ~~3~~**[1(2)]** of this administrative regulation; and

2. Monies are available.

(c) The Military Burial Honor Guard Program shall supplement the minimum, two (2) person, flag presentation federal honors ceremony.

(2) Standards. The Military Burial Honor Guard Program activities shall comply with the standards established by the Department of Defense Military Funeral Honors Program defined in 10 U.S.C. 1491.

(3) Responsibilities.

(a) Military Burial Honor Guard Coordinator. The Military Burial Honor Guard Coordinator shall:

1. Implement this administrative regulation to conduct military funeral honors support by the Kentucky National Guard and other military funeral honors authorized providers;

2. Ensure proper decorum consistent with Department of Defense Military Funeral Honors Program defined in 10 U.S.C. 1491 and including trained personnel, proper equipment, standardized procedures, and quality control of funeral honors details;

3. Validate requests for military funeral honor support received

from the Casualty Assistance Office and coordinate with Military Burial Honor Guard Program authorized providers;

4. Ensure adequate funding requests to support the Military Burial Honor Guard Program;

5. Coordinate with active and reserve military, veterans service organizations, and other civilian military funeral honors authorized providers for support and assistance in the conduct of a military funeral honors detail;

6. Serve as the single point of contact for all matters relating to the conduct of military funeral honor details by the Kentucky National Guard;

7. Collect standardized data on all military funeral honors rendered by the Kentucky National Guard and supported by the Military Burial Honor Guard Program; and

8. Receive and coordinate all requests for military funeral honors support from the Casualty Assistance Office, funeral directors, family members, or other authorized sources.

(b) Department of Veterans Affairs. The Kentucky Department of Veterans Affairs shall:

1. Support the Department of Military Affairs in the implementation and maintenance of the Military Burial Honor Guard Program;

2. Verify veteran's service organizations as military funeral honors authorized providers; and

3. Assist military funeral honors authorized providers in procuring sufficient training aides and equipment to conduct military funeral honors. ;

(c) Military funeral honors authorized providers. Military funeral honors authorized providers may perform, augment, and supplement state military funeral honors details. The Adjutant General may establish on-going liaison and formal agreements with any Department of Defense recognized military funeral honors authorized provider or other entity within the state to assist with obtaining Department of Defense recognition, training, and support or to further the understanding of the sacrifices made by the deceased.

(4) Military Burial Honor Guard Program procedures. Requesting military funeral honors support.

(a) Funeral directors or families shall contact the appropriate Department of Defense Casualty Assistance Office or the Military Burial Honor Guard Program Coordinator to request military funeral honors support.

(b) The/This Department of Defense component shall coordinate with the Kentucky Department of Military Affairs or other military element to provide the requested support to eligible veterans based on the service component of the deceased (Kentucky National Guard, other Selected Reserve element, U.S. Army, Air Force, Space Force, Navy, Marine Corps, or Coast Guard).

(c) All requests for military funeral honors support shall be a minimum of forty-eight (48) hours in advance of the requested burial ceremony. The Military Burial Honor Guard Coordinator may, if monies, equipment, and personnel are available to accommodate the late request, waive the forty-eight (48) hour notice requirement.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 36.390 and KRS 36.394.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

BOARDS AND COMMISSIONS
State Board of Accountancy
(As Amended at ARRS, September 12, 2023)

201 KAR 1:050. Accountancy license application.

RELATES TO: KRS 325.261, 325.280, 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS

Chapter 325. KRS 325.330(1)(c) requires the board to promulgate administrative regulations establishing an application process. This administrative regulation establishes the requirements for obtaining a license as a certified public accountant.

Section 1. (1) A person who has met the qualifications established/contained in KRS 325.261 shall submit the Application for License.

(2) With his or her application, the person shall include:

(a) A check or money order, which is nonrefundable, made payable to the Kentucky State Board of Accountancy for \$100;

(b) The certificate of experience as established/described in 201 KAR 1:063;

(c) A list of colleges and universities the applicant attended with graduation dates, degrees awarded, and the "official transcript" as defined by/described in 201 KAR 1:190, Section 1, unless it is already in the possession of the board;

(d) An "official transcript" as defined by/described in 201 KAR 1:190, Section 1, from an accredited college or university as established/described in 201 KAR 1:190, which verifies that the candidate has satisfied the 150-hour requirement of KRS 325.261;

(e) Proof of successful completion of the Uniform CPA Exam. If the applicant successfully completed the examination in Kentucky, documentation shall not be required. If the examination was successfully completed in another jurisdiction, the applicant shall have an Authorization for Interstate Exchange of Information submitted to the board on his or her behalf; and

(f) If the applicant is not a citizen of the United States, documentation from the:

1. [Documentation from the] United States Citizenship and Immigration Services, or its successor, to verify the person is legally residing in the United States; or

2. [Documentation from the] Employer that verifies the person is an employee of a public accounting firm, company, or institution of postsecondary education located outside the United States, which also has an office or campus located in the United States.

Section 2. License by Reciprocity.

(1) An applicant for a license by reciprocity shall submit or cause to have submitted:

(a) An Application for Reciprocal License;

(b) Payment of the fee established in Section 1(2)(a) of this administrative regulation and other documents required by Section 1(2) of this administrative regulation, except for an official transcript; and

(c) An Authorization for Interstate Exchange of Information form completed by the licensing jurisdiction where the applicant holds a valid and active license to practice.

(2) If the applicant cannot provide the certificate of experience as required in Section 1 of this administrative regulation and:

(a) Is applying under the provisions of KRS 325.280(1)(c)1, the applicant shall have the licensing jurisdiction where he or she holds a valid and active license send certified copies of experience requirement documents from his or her license file; or

(b) Is applying under the provisions of KRS 325.280(1)(c)2, he or she shall submit or cause to have submitted one (1) of the following documents, which clearly reflects that the applicant has practiced public accounting as a full-time profession for four (4) of the last ten (10) years:

1. Proof of public accounting errors and omissions insurance;
2. A letter from an attorney, client, or certified public accountant that has knowledge of the applicant's practice;
3. Copies of firm license applications; or
4. Copies of personal tax returns.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for License", August 2015;

(b) "Application for Reciprocal License", August 2015; and

(c) "Authorization for Interstate Exchange of Information", 2023[August 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332

W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. and 4:30 p.m.

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, September 12, 2023)

201 KAR 2:076. Compounding.

RELATES TO: KRS 217.055(1)(2), 217.065(7), 315.020(1), 315.035(6), 315.0351, 315.121, 315.191(1)(a), (g), 21 U.S.C. 353A, 21 C.F.R. 216.23

STATUTORY AUTHORITY: KRS 315.020(1), 315.035(6), 315.0351, 315.191(1)(a), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020(1) requires the owner of a pharmacy who is not a pharmacist to place a pharmacist in charge of the owner's pharmacy. KRS 315.035(6) authorizes the board to promulgate administrative regulations to assure that proper equipment and reference material is on hand/utlized [on-hand] considering the nature of the pharmacy practice conducted at the particular pharmacy and to assure reasonable health and safety standards for areas within the pharmacies, which are not subject to these standards under CHFS. KRS 315.191(1) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing, and repackaging of radiopharmaceuticals in accordance with 21 U.S.C. 353A.

Section 1. Definitions.

(1) "API" means active pharmaceutical ingredient.

(2) "Designated person" means one (1) or more individuals assigned to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of compounded non-sterile or sterile preparations or the preparation, compounding, dispensing, and repackaging of radiopharmaceuticals.

(3) "Essential copy of a commercially available drug product" is a compounded preparation in which:

(a) The compounded preparation has the same API as the commercially available drug product;

(b) The APIs have the same, similar, or an easily substitutable dosage strength; and

(c) The commercially available drug product can be used by the same route of administration as prescribed for the compounded preparations, unless a prescriber determines that there is a change, made for an identified individual patient, which produces, for that patient, a significant difference from the commercially available drug product.

(4) "Hazardous Drug" means any drug identified by the National Institute for Occupational Safety and Health with at least one (1) of the following criteria:

(a) Carcinogenicity, teratogenicity, or developmental toxicity;

(b) Reproductive toxicity in humans;

(c) Organ toxicity at low dose in humans or animals;

(d) Genotoxicity; or

(e) New drugs that mimic existing hazardous drugs in structure or toxicity.

(5) "USP" means United States Pharmacopeia.

Section 2. Policies and Procedures.

(1) A policy and procedure manual for non-sterile and sterile [and sterile] compounding shall be readily available at a pharmacy for inspection purposes.

(2) The policy and procedure[A copy of the] manual shall be made available to the board upon request.

(3) The manual shall be reviewed and revised on an annual basis.

Section 3.[Section 2.] Standards.

(1) All non-sterile compounded preparations shall be compounded pursuant to [United States Pharmacopeia (USP)]USP 795[-, unless specified portions submitted by a pharmacist have been waived by the board. Notwithstanding any USP guidance to the contrary, the addition of flavoring to a drug shall not be considered non-sterile compounding, if the additive:]

[(a)] [Is inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and]

[(b)] [Is not greater than five (5) percent of the drug product's total volume].

(2) All sterile compounded preparations shall be compounded pursuant to USP 797[-,][unless specified portions submitted by a pharmacist have been waived by the board].

(3) All preparation, compounding, dispensing, and repackaging of radiopharmaceuticals shall be pursuant to USP[United States Pharmacopeia (USP)] 825[-, unless specified portions submitted by a pharmacist have been waived by the board].

(4) All non-sterile or sterile compounded preparations containing hazardous drugs shall be compounded pursuant to USP 800, unless specified portions submitted by a pharmacy have been waived by the board.

[(4)] [All written waiver requests submitted by a pharmacist shall be considered by the Board at its next regularly scheduled meeting.]

[(5)] [The board, upon a showing of good cause and in balancing the best interest of the public health, safety, and welfare, may waive the requirement of any specified portion of USP 795, 797 or 825.]

(5) Non-sterile and sterile preparations compounded for human use shall[must:] or

(a) 1. Comply with the standards of an applicable USP or National Formulary monograph;

2.[(b)] Be compounded from a component of a human drug approved by the United States Food and Drug Administration (FDA); or

3.[(c)] Be compounded from a component that appears on the FDA's list of bulk drug substances established in 21 C.F.R. 216.23 that can be used in compounding; and[.]

[(b)][(d)] Not be essential copies of a commercially available drug product unless authorized by 21 U.S.C. 353(a).

Section 4.[Section 3.] Designated Person.

(1) The designated person of a[A] facility that compounds non-sterile or sterile preparations or prepares, compounds, dispenses, or repackages radiopharmaceuticals shall be [managed by a pharmacist-in-charge (PIC) licensed to practice pharmacy in the Commonwealth and who is] knowledgeable in the specialized requirements[functions] of preparing and dispensing compounded [non-sterile and sterile] preparations[-, including the principles of aseptic technique and quality assurance].

(2) The PIC shall serve or appoint[be responsible for the appointment for] any designated person[persons]. [The PIC shall be responsible for the purchasing, storage, compounding, repackaging, dispensing, distribution of all drugs and preparations, development and continuing review of all policies and procedures, training manuals, quality assurance programs, and participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.]

(3) The PIC shall [be responsible to] ensure any compounded preparation leaving the premises is shipped or delivered in a manner that maintains the integrity and stability of the preparation[may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding].

Section 5.[Section 4.] Dispensing and Labeling.

(1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical order from a prescriber before

dispensing any compounded, non-sterile or sterile preparation. These prescriptions or medical orders shall contain the following:

- (a) Patient's name and species, if not human;
- (b) Patient's address on controlled substances prescriptions or location (room number);
- (c) Drug name and strength;
- (d) Directions for use;
- (e) Date;
- (f) Authorized prescriber's name;
- (g) Prescriber's address and DEA number, if applicable;
- (h) Refill or end date instructions, if applicable; and
- (i) Dispensing quantity, if applicable.

(2) A pharmacist dispensing compounded preparations for veterinary use shall must follow the order requirements of 201 KAR 2:311. [A pharmacy generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC for a period of two

(2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:]

- [(a)] [Patient's name;]
- [(b)] [Name of compounded preparation dispensed;]
- [(c)] [Date dispensed;]
- [(d)] [Drug content and quantity; and]
- [(e)] [Patient's directions.]

(3) Each compounded preparation dispensed to patients shall be labeled with the following information:

- (a) Name, address, and telephone number of the licensed pharmacy, if preparation[product] will leave the premises;
- (b) Date;
- (c) Identifying number;
- (d) Patient's full name;
- (e) Name of each drug, strength, and amount;
- (f) Directions for use, including infusion rate;
- (g) Required controlled substances transfer warning[warnings], if applicable;

- (h) Beyond use date;
- (i) Identity of dispensing pharmacist;
- (j) Storage requirements, if applicable; and
- (k) Auxiliary labels, if applicable.

(4) Verification of a compounded preparation shall be completed by a pharmacist after the preparation is compounded and prior to dispensing to the patient. Documentation of the verification shall include notation of each pharmacist who performs verification.

Section 6. Recordkeeping.

(1)[(4)] The PIC shall maintain access to and provide[submit, as appropriate, these] records and reports to the board or its agents upon request[as are required to ensure the patient's health, safety, and welfare]. Records shall be maintained and readily available for no less than five (5) years[-, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents].

(2) Records. Records[These] shall include the following:

- (a) Prescriptions, [or] medical orders, or requests for compounded preparations[Patient profile];
- (b) Purchase records;
- (c) Verification records[Biennial controlled substances inventories]; and
- (d) [Policy and procedures manual;]
- [(e)] [Policies and procedures for hazardous wastes, if applicable;]
- [(f)] [Quality assurance records; and]
- [(g)] Other records and reports as [may be]required by USP 795, 797, 800, and 825, state and federal law, and administrative regulations of the Kentucky Board of Pharmacy[KRS 217 or 315 and 201 KAR Chapter 2].

[(5)] [Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's

records. Release of this information shall be in accordance with federal and state laws.]

[(6)] [The PIC shall be responsible for the environmental control of all products shipped. Any compounded product that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.]

[(7)] [The PIC shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health.]

[Section 5.] [Hazardous Drugs.]

[(1)] [All non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP 795.]

[(2)] [All sterile compounded preparations that contain hazardous substances shall be compounded pursuant to USP 797.]

Section 7.[Section 6.] Violations. Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121.

Section 8. Waivers.

(1) All written waiver requests submitted by a pharmacy shall be considered by the board at its next regularly scheduled meeting.

(2) The board, upon a showing of good cause and in balancing the best interest of the public health, safety and welfare, may waive the requirement of any specified portion of USP 795, 797, 800 or 825 or any provision of this administrative regulation. Any waiver issued shall identify with specificity the pharmacy to which it applies and the provisions of law for which the waiver is applied.

Section 9. Enforcement Discretion.

(1) Effective January 1, 2026, the board shall [not] enforce the [provisions of this regulatory amendment requiring compliance with the 2022 revisions to USP Chapters USP 795, [and] 797, and 800[until January 1, 2026]. Until January 1, 2026, the board shall enforce the 2014 revision of USP 795, [will be enforced] and the 2008 revision of USP 797, and the board shall not enforce USP 800 will be enforced. USP 800 will not be enforced until January 1, 2026. Until January 1, 2026, at the request of a permit holder, the board may inspect pursuant to the 2022 revision of the USP Chapters 795, 797, and 800.

(2) The board shall not enforce the USP 795 standard that the addition of flavoring to a commercially available drug is[shall not be considered non-sterile] compounding, if the additive:

- (a) Is non-expired, inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and
- (b) Is not greater than five (5) percent of the drug product's total volume.

Section 10.[Section 7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "USP 795, Revision Bulletin, Official", November 1, 2022[January 1, 2014];
- (b) "USP 795, Revision Bulletin, Official", January 1, 2014;
- (c) "USP 797, Revision Bulletin, Official", November 1, 2022[June 1, 2008];
- (d) "USP 797, Revision Bulletin Official", June 1, 2008; and
- (e)[(e)] "USP 825, Revision Bulletin, Official, Official", December 1, 2020[-]; and
- (f)[(d)] "USP 800, Revision Bulletin", December 1, 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx>.

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PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(As Amended at ARRS, September 12, 2023)

201 KAR 27:005. Definitions for 201 KAR Chapter 27.

RELATES TO: KRS 229.011, 229.031, 229.111, 229.131, 229.155, 229.171(1)

STATUTORY AUTHORITY: KRS 229.171(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole control, authority, and jurisdiction over all unarmed combat shows in the commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. This administrative regulation establishes the definitions used in 201 KAR Chapter 27.

Section 1. Definitions.

(1) "Battle royal" means an unarmed combat show involving more than two (2) contestants competing in a "last man standing wins" format.

(2) "Bout" means a single competition or exhibition of unarmed combat pitting two (2) opponents against one another in which the contestants strive earnestly and in good faith to win, are judged, and a winner declared.

(3) "Boxing" is defined by KRS 229.011(2).

(4) "Card" means a series of bouts, matches, or exhibitions scheduled or occurring as part of a single program.

(5) "Commission" is defined by KRS 229.011(3).

(6) "Contestant" means any person engaging in a show of unarmed combat coming under the commission's jurisdiction.

(7) "Exhibition" is defined by KRS 229.011(4).

(8) "Grounded opponent" means a contestant participating in a match or bout:

(a) Who has any part of the body, other than the sole of the feet, touching the floor of the fenced area ~~established~~prescribed by 201 KAR 27:016, Section 5(4);~~;~~

(b) ~~To be~~ Found to be grounded by a referee with sole authority to make the determination in accordance with 201 KAR 27:016, Section 18; and

(c) Who has~~;~~ a flat palm of one (1) hand ~~must be~~ down, or any other body part ~~must be~~ touching the fighting area floor, other than the sole of the feet. For example, a single knee or arm makes the fighter grounded without having to have any other body part in touch with the fighting area floor. ~~The referee shall have the sole authority to determine whether a contestant is a grounded opponent in accordance with this definition.~~

(9)(8) "Healthcare professional" means any person licensed in Kentucky as a physician, chiropractor, podiatrist, nurse practitioner, physician assistant, registered nurse, physical therapist, paramedic, emergency medical technician, or athletic trainer.

(10)(9) "Inspector" means any person assigned by the executive director of the commission or the executive director's designee to supervise shows coming under the commission's jurisdiction.

(11)(40) "Judge" means an official licensed by the commission to score bouts and cast a vote in determining the winner of any bout.

(12)(44) "Kickboxing" is defined by KRS 229.011(5).

(13)(42) "Manager":

(a) Means a person who:

1. Undertakes to represent the interest of another person, in procuring, arranging, or conducting a professional bout or exhibition in which the person is to participate as a contestant;

2. Directs or controls the professional unarmed combat activities of a contestant;

3. Receives or is entitled to receive ten (10) percent or more of the gross purse or gross income of any professional contestant for services relating to participation of the contestant in a professional bout or exhibition; or

4. Receives compensation for service as an agent or representative of a bout; and

(b) Does not mean an attorney licensed to practice in this state if his or her participation in these activities is restricted solely to legal representation of the interests of a contestant as his or her client.

(14)(43) "Match" means a single event or exhibition in wrestling pitting two (2) or more opponents against one another.

(15)(44) "Medical advisory panel" means the Kentucky Boxing and Wrestling Medical Advisory Panel created by KRS 229.260.

(16)(45) "Mixed martial arts" is defined by KRS 229.011(6).

(17)(46) "Promoter" means any individual, corporation, association, partnership, or club that is licensed to promote or conduct professional boxing, wrestling, mixed martial arts, or kickboxing shows within the commonwealth and who is responsible for the arranging, organizing, matchmaking, and booking of a show.

(18)(47) "Ring official" means any person who performs an official function during a bout, match, or exhibition, including an announcer, judge, healthcare professional, referee, or timekeeper.

(19)(48) "Second" means any person aiding, assisting, or advising a contestant during a show.

(20)(49) "Serious physical injury" means physical injury that creates a substantial risk of death or causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(21)(20) "Show" is defined by KRS 229.011(9).

(22)(24) "Technical knockout" means the ending of a bout by the referee or physician on the grounds of one (1) contestant's inability to continue, the opponent being declared the winner.

(23)(22) "Trainer" means any person who participates in the guidance and instruction of any contestant so as to make that individual proficient or qualified to engage in unarmed combat, if the training occurs within this commonwealth.

(24)(23) "Unarmed combat" is defined by KRS 229.011(10).

(25)(24) "Wrestling event staff" means anyone other than a wrestler or referee permitted to be inside the six (6) foot barrier around the ring during a wrestling event. This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(As Amended at ARRS, September 12, 2023)

201 KAR 27:008. License requirements and fees.

RELATES TO: KRS 229.025, 229.035, 229.065, 229.171, Chapter 311, 15 U.S.C. 6304, 6305

STATUTORY AUTHORITY: KRS 229.025, 229.035, 229.065, 229.171, 15 U.S.C. 6304, 6305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole control, authority, and jurisdiction over all unarmed combat shows to be conducted, held, or given within the commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025(3) requires the commission to promulgate administrative regulations to establish license types, the eligibility requirements for each license type, the expiration date of each license type, the annual license fee, and method for submitting all applications for licensure. KRS 229.025(2) prohibits participation in an unarmed combat show in any capacity without holding a license issued by the commission. KRS 229.035 requires a promoter license and a bond approved as to form and sufficiency of sureties by the commission. KRS 229.065 requires a license by the commission for wrestling training. 15 U.S.C. 6304 requires protection of the health and safety of boxers, and includes requirements for a physical examination, a physician to be present at ringside, an ambulance or resuscitation equipment,

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and health insurance coverage. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who registers with the commission. This administrative regulation establishes license requirements and fees for persons who conduct activities regulated by the commission.

Section 1. General Provisions. (1) A person shall not participate in an unarmed combat show or exhibition unless the person is licensed by the commission.

(2) Each license shall be separate. A person shall not use a license in one (1) capacity or sport to serve in a different capacity or sport, except:

(a) A manager may act as a second; and

(b) A contestant may act as a second.

(3)(a) A promoter license shall be valid for one (1) year from the date of issuance.

(b) All other licenses shall be valid from January 1 through December 31.

(4) Information provided on or with a license application shall be complete and correct. Any false statement of a material matter shall be grounds for:

(a) Denial of a license; or

(b) If the license has been issued, suspension, probation, or revocation of the license.

(5) The commission may require an applicant to appear before the commission to answer questions or provide documents in conjunction with an application for a license if:

(a) The person has not been licensed by the commission within the previous five (5) years;

(b) The person has a history of violations in any jurisdiction;

(c) The applicant has not fully completed the required application; or

(d) The applicant's written submissions have not met the applicant's burden of proof to prove his or her qualifications for a license.

(6) A licensee shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 and shall be subject to any event-related orders given by the commission or an inspector.

Section 2. Licenses, Applications, and Fees. (1) The applicant shall complete the appropriate application as established in the table in subsection (2) of this section. The application shall be signed by the applicant under penalty of perjury.

(2) The following applications and non-refundable annual fees shall be required before any person may be licensed:

(a) Boxing and kickboxing licenses:

Boxing and Kickboxing License Type	License Application Required	License Fee
Boxer	Boxing-MMA Contestant Application	\$40[\$25]
Kickboxer	Boxing-MMA Contestant Application	\$40[\$25]
Manager	Non-Contestant Application	\$40[\$25]
Trainer	Non-Contestant Application	\$40[\$25]
Second	Non-Contestant Application	\$40[\$25]
Referee	Referee[Non-Contestant] Application	\$40[\$25]
Judge	Non-Contestant Application	\$40[\$25]
Timekeeper	Non-Contestant Application	\$40[\$25]

(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Boxing-MMA Contestant Application	\$40[\$25]
Amateur mixed martial artist	Boxing-MMA Contestant Application	\$40[\$25]
Manager	Non-Contestant Application	\$40[\$25]
Trainer	Non-Contestant Application	\$40[\$25]
Second	Non-Contestant Application	\$40[\$25]

Referee	Referee[Non-Contestant] Application	\$40[\$25]
Judge	Non-Contestant Application	\$40[\$25]
Timekeeper	Non-Contestant Application	\$40[\$25]

(c) Wrestling licenses:

Wrestling License Type	License Application Required	License Fee
Wrestler	Wrestler[Contestant] Application	\$40[\$25]
Referee	Referee[Non-Contestant] Application	\$40[\$25]
Wrestling event staff	Non-Contestant Application	\$40[\$25]

(d) Promoter license:

Promoter License Type	License Application Required	License Fee
Promoter	Promoter Application	\$300

(e) Medical Provider licenses:

Medical License Type	License Application Required	License Fee
Physician	Medical Provider Application	\$40[\$25]
Healthcare Professional	Medical Provider Application	\$40[\$25]

(f) For all application fees, applicants that do not submit license applications via the eServices option on the commission's Web site shall pay an additional processing fee of ten (10) dollars.

Section 3. Health Physical and Application Timing Requirements.

(1) The following applicants for licensure shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than ninety (90) days before the licensing application is submitted:

(a) Boxer;

(b) Kickboxer;

(c) Professional mixed martial artist;

(d) Amateur mixed martial artist;

(e) Boxing and kickboxing referee; and

(f) Mixed martial arts referee.

(2) An applicant for licensure as a wrestler or wrestling referee shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than (90) days before the licensing application is submitted if the applicant:

(a) Has not held a wrestler license in the past two (2) years;

(b) Is forty-five (45) years of age or older; or

(c) Has had an in-patient surgical procedure or overnight hospital stay in the past one (1) year.

(3) An applicant who is subject to subsection (1) or [subsection](2) of this section shall submit his or her physical and bloodwork to the commission no less than two (2) business days prior to the applicant's first event.

Section 4. Determination of Ability to Obtain a License as a Contestant. (1) An applicant for a license as a boxer, kickboxer, or professional mixed martial artist shall demonstrate the ability to:

(a) Be competitive in the sport; and

(b) Compete without the risk of serious physical injury.

(2) An applicant for a license as a wrestler or an amateur mixed martial artist shall demonstrate that the applicant has the ability to compete without the risk of serious physical injury.

(3)(a) Individual consideration from a member of the medical advisory panel shall be required if an applicant for licensure as a boxer, kickboxer, professional mixed martial artist, or amateur mixed martial artist:

1. Is thirty-eight (38) or more years old;

2. Has accrued six (6) consecutive losses;

3. Has lost more than twenty-five (25) fights in his or her career;

4. Has fought in 350 or more career rounds;

5. Has lost more than five (5) bouts by knockout in his or her career; or

6. Has been inactive for more than thirty (30) months.

(b) A member of the medical advisory panel may order additional medical testing if the medical evidence before it is inconclusive or incomplete.

(c) The medical advisory panel or member of the panel shall report its recommendation to the commission within forty-five (45) days of being referred a physical.

Section 5. Medical Provider License. (1) An applicant for a physician license shall be a physician licensed pursuant to KRS Chapter 311.

(2) A person licensed or seeking licensure as a physician or healthcare professional shall maintain an active license in his or her field of practice and certification to administer cardiopulmonary resuscitation.

Section 6. Promoter License. An applicant for licensure as a promoter shall obtain a \$10,000 Surety bond. To obtain a surety the applicant shall complete and have notarized the Promoter Bond Form.

Section 7. Change from Amateur Status to Professional Status.

(1) The commission shall consider the applicant's previous fighting experience in deciding whether to permit a person licensed as an amateur to become a professional. This consideration shall include the:

- (a) Number of sanctioned bouts the applicant has competed in;
- (b) Number of sanctioned rounds the applicant has competed in;
- (c) Date of the applicant's bouts;
- (d) Applicant's performance in previous bouts, including the applicant's win-loss record; and
- (e) Level of competition the applicant has competed against.

(2) A person shall not be licensed as a professional unless the person has fought in a minimum of three (3) bouts.

(3) A licensee who seeks to change his or her status from amateur to professional shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first professional event.

Section 8. Boxer's Federal Identification Card. (1) To obtain a boxer's federal identification card, an applicant shall complete and submit to the commission a Boxer's Federal Identification Card Application.

(2) The fee for a boxer's federal identification card shall be ten (10) dollars, which shall be submitted with the Boxer's Federal Identification Card Application.

(3) The boxer's federal identification card shall be valid for four (4) years from the date issued.

Section 9. Change of address. A licensee shall provide his or her new address to the commission within thirty (30) days of a change in address.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MMA/Boxing[Boxing-MMA-]Contestant Application", June 2023[November, 2019];

(b) "Wrestler [Contestant] Application", June 2023;

(c) (b) "Non-Contestant Application", June 2023[November, 2019];

(d) (e) "Promoter Application", June 2023[November, 2019];

(e) (d) "Medical Provider Application", August[June] 2023[November, 2019];

(f) (e) "Physical Report", June 2023[November, 2019];

(g) (f) "Promoter Bond Form", June 2023[November, 2019];[and]

(h) (g) "Boxer's Federal Identification Card Application", June 2023[November, 2019]; and

(i) "Referee Application", June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx>.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing & Wrestling Commission, phone (502) 782-8204, email doug.hardin@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(As Amended at ARRS, September 12, 2023)

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (b)

STATUTORY AUTHORITY: KRS 229.025, 229.171, 15 U.S.C. 6304, 6305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Commission to exercise sole direction, management, control, and jurisdiction over all unarmed combat shows in the Commonwealth[commonwealth]. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025 requires every licensee to be subject to administrative regulations promulgated by the commission. 15 U.S.C. 6304 requires protection of the health and safety of boxers, and includes requirements for a physical examination, a physician to be present at ringside, an ambulance or resuscitation equipment, and health insurance coverage. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who registers with the commission. This administrative regulation establishes the requirements for boxing and kickboxing shows, and for participants in boxing and kickboxing shows.

Section 1. Show Date.

(1) A promoter shall request a show date by completing and submitting to the commission the Boxing and Kickboxing Show Notice Form.

(2) The Boxing and Kickboxing Show Notice Form shall be submitted to the commission for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.aspx>; or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. A contestant with repeated and unexcused absences or cancellations[a-cancellation] shall be issued a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. Bout approval does not exempt contestants[contestant] from individual physical approval as required by 201 KAR 27:008, Section 3. The commission's determination shall be based upon the contestants' previous fighting experience, including:

- (a) The number of bouts the contestants have competed in;
- (b) The number of rounds the contestants have competed in;
- (c) The date of the contestants' bouts;
- (d) The contestants' performance in previous bouts, including the contestants' win-loss record;
- (e) The level of competition the contestants have faced; and

- (f) The contestants' medical histories.
- (4) The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as established in this section. If a ring official serves both as a referee and as a judge under Section 13(2)(a) of this administrative regulation, the official shall receive pay for both referee and judge services as established in this section. If a referee also serves as a judge other than as an in-ring judge, the referee shall only receive compensation as a referee as established in this section.[as follows:]

(a) Judge: at least the amount established by subparagraphs 1. and 2. of this paragraph and set by the following schedule based on the number of bouts on the show card:[seventy-five (75) dollars each:]

1. One (1) to eleven (11), \$125; and
2. Twelve (12) or more bouts, \$175.

(b) Timekeeper: at least the amount established by subparagraphs 1. and 2. of this paragraph and set by the following schedule based on the number of bouts on the show card:[seventy-five (75) dollars;]

1. One (1) to eleven (11) bouts, \$100; and
2. Twelve (12) or more bouts, \$125.

(c) Physician: at least the amount established by subparagraphs 1. and 2. of this paragraph and set by the following schedule based on the number of bouts on the show card:[\$350;]

1. One (1) to eleven (11) bouts, \$400; and
2. Twelve (12) or more bouts, \$500.

(d) Each referee: At least the amount established by subparagraphs 1. and 2. of this paragraph and set by the following schedule based on the number of bouts on the show card:[Referee: \$100 each; and]

1. One (1) to eleven (11) bouts, \$150; and
2. Twelve (12) or more bouts, \$200.

(e) Each[Bout] assistant: at least the amount established by subparagraphs 1. and 2. of this paragraph and set by the following schedule based on the number of bouts on the show card:[seventy-five (75) dollars each.]

1. One (1) to eleven (11) bouts, seventy-five (75) dollars; and
2. Twelve (12) or more bouts, \$100.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)

(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody

test results to the commission at least forty-eight (48) hours prior to the event.

(a) The results of these tests shall be no more than 365 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Boxing and Kickboxing Pre-Fight Medical Questionnaire under penalty of perjury.

(7) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall comply with instructions given by the inspector.

Section 5. The Ring.

(1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission. Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors if the heat index is at or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire ring.

(3)

(a) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used.

(b) A bout may be held in a mixed martial arts cage if the bout is in conjunction with a mixed martial arts event.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for contestants to enter the ring.

(5) Ring specifications shall be as established in this subsection.

(a) A bout shall be held in a four (4) sided roped ring.

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square.

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot.

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor.

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes.

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

- a. Twenty-four (24) inches;
- b. Thirty-six (36) inches; and
- c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

- a. Made of metal or other strong material;
- b. Not less than three (3) inches in diameter; and
- c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform;

3. Is covered with a single canvas stretched tightly; and

4. Is, at the commencement of the event, clean, sanitary, dry, and free from:

- a. Grit;
- b. Dirt;
- c. Resin; and
- d. Any other foreign object or substance.

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(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring and ring equipment, the promoter shall supply:

- (a) A public address system in good working order;
- (b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;
- (c) Items for each contestant's corner, to include:
 - 1. A stool or chair;
 - 2. A clean bucket;
 - 3. Towels; and
 - 4. Rubber gloves;
- (d) A complete set of numbered round-cards, if needed;
- (e) Gloves for each boxer or kickboxer; and
- (f) A scale used for weigh-in, which shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that:

- (a) Extends above the waistline of the contestant; or
- (b) Contains any metal substance during a bout.

(3) A contestant shall wear shoes during a bout. The shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

- (a) Groin protector; and
- (b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

(7) Boxing gloves.

(a) Contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

- 1. Dry, clean, and sanitary;
- 2. Furnished by the promoter;
- 3. Of equal weight, not to exceed twelve (12) ounces per glove;
- 4. A minimum of eight (8) ounces per glove for a contestant weighing no more than 154 pounds;
- 5. A minimum of ten (10) ounces per glove for a contestant weighing over 154 pounds; and
- 6. Thumbless or thumb-attached.

(b) Gloves shall be new for main events and for bouts and exhibitions scheduled for ten (10) or more rounds.

(c) Gloves shall be approved or denied in accordance with this administrative regulation by the commission prior to a bout.

(d) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room while supervised by the inspector.

(e) Breaking, roughing, or twisting of gloves shall not be permitted.

(f) The laces on gloves shall be tied on the back of the wrist and taped.

(g) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his or her competitor.

(8) Bandages.

(a) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(b) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(c) If adhesive tape is used:

- 1. Medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place;
- 2. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch;

3. Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection; and

4. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(d) Hand wraps shall be applied in the dressing room in the presence of an inspector or ring official. The inspector or ring official shall sign the hand wrap and the tape around the strings of the gloves.

Section 8. Weight Classes.

(1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length.

(1) Bouts and rounds shall:

- (a) Be three (3) minutes in duration; and
- (b) Have a one (1) minute rest period between rounds.

(2) A bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

(3) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds without commission approval.

Section 10. Judging and Scoring.

(1) Scoring shall be as established in this subsection.

(a) Each round shall be accounted for on the scorecard, using the ten (10) point system. Scoring shall be expressed in ratio of merit and demerit.

(b) Score cards shall be:

- 1. Signed;
- 2. Handed to the referee in the ring; and
- 3. Filed by the referee with the inspector.

(c) The decision shall then be announced from the ring.

(2) Decisions shall be rendered as established in this subsection.

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by:

- 1. A majority vote of the judges, if three (3) judges are employed to judge the bout; or
- 2. A majority vote of the judges and the referee, if two (2) judges are employed to judge the bout.

(b) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

- 1. Clean, forceful hitting;
- 2. Aggressiveness;
- 3. Defensive work; and
- 4. Ring generalship.

(c) The requirements governing knockdowns shall be as established in this paragraph.

1. If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

- a. Immediately retire to the farthest neutral corner of the ring; and
- b. Remain there until the referee completes the count or signals a resumption of action.

2. The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

3. The referee shall pick up the count from the timekeeper.

4. If a contestant fails to rise to his or her feet before the count of ten (10), the referee shall declare the contestant the loser by waving both arms to indicate a knockout.

5. If a contestant who is down rises to his or her feet during the count, the referee may step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

6. If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he or she left off.

7. A standing eight (8) count shall be used at the discretion of the referee.

8. If a contestant is knocked down three (3) times during a round, the bout shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

9. If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare the contestant knocked out.

(3) A contestant shall be considered down if:

- (a) Any part of the contestant's body other than his or her feet is on the ring floor;
 - (b) The contestant is hanging helplessly over the ropes and in the judgment of the referee, is unable to stand; or
 - (c) The contestant is rising from the down position.
- (4) Failure to resume a bout.

(a) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count the contestant out the same as if the contestant were down in that round.

(b) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his or her feet before the expiration of ten (10) seconds, the referee shall count the contestant out as if the contestant were down.

Section 11. Fouls.

(1) The following shall be considered fouls:

- (a) Hitting below the belt;
 - (b) Hitting an opponent who is down or who is getting up after having been down;
 - (c) Holding an opponent and deliberately maintaining a clinch;
 - (d) Holding an opponent with one (1) hand and hitting with the other;
 - (e) Butting with the head or shoulder or using the knee;
 - (f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow;
 - (g) Hitting, or flicking, with the glove open or thumbing;
 - (h) Wrestling, or roughing, against the ropes;
 - (i) Purposely going down without having been hit;
 - (j) Deliberately striking at the part of an opponent's body over the kidneys;
 - (k) Using a pivot blow or rabbit punch;
 - (l) Biting of the opponent;
 - (m) Using abusive or profane language;
 - (n) Failing to obey the referee;
 - (o) Engaging in any unsportsmanlike trick or action that causes injury to another person;
 - (p) Hitting after the bell has sounded at the end of the round; or
 - (q) Backhand blows except in kickboxing.
- (2)

(a) A contestant who commits a foul may be disqualified and the decision awarded to the opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that prevents the opponent from continuing in the bout.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by an inspector.

(4)

(a) If a bout is temporarily stopped by the referee due to fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, the referee shall order the bout resumed after a reasonable time set by the referee, but not exceeding five (5) minutes.

(5)

(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the bout to be subsequently stopped, the bout shall be scored on the basis of the judges' scorecards.

(6) If a bout is ended by reason of fouling or failure to give an honest demonstration of skill, as determined by an inspector or referee, the compensation of the offending contestant shall be withheld by the promoter.

Section 12. Prohibitions.

(1) The following shall be prohibited:

- (a) Battle royal type events; and
 - (b) Use of excessive grease or other substance that may handicap an opponent.
- (2) A contestant shall not engage at a show in boxing or sparring with a member of the opposite sex.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) All ring officials shall be selected, licensed, and assigned to each show by the commission. For each show, a minimum of the following shall be required:

(a) A minimum of three (3) judges, or a minimum of two (2) judges if a referee also serves as a judge, and a maximum of five (5) judges;

(b) One (1) timekeeper;

(c) One (1) physician, except two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the commission; and

(d) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

- (a) Whether or not a foul has been committed;
- (b) Whether or not each contestant is competing in earnest; and
- (c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue from the referee to commence or take time out.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Boxing and Kickboxing Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the Boxing and Kickboxing Pre-Fight Examination form that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver to the inspector the form Boxing and Kickboxing Post-Fight Examination that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector:

(2) If a bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)

(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.

(a) The referee shall, before starting a bout, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout.

(b) The referee shall call the contestants together in the ring immediately preceding a bout for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout at any time if the referee has grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;

2. Not competing in earnest; or

3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) The executive director, the executive director's designee, or a commission representative may issue an order for a medical suspension of a contestant's license as established in paragraphs (a) through (f) of this subsection, under the following circumstances:

(a) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete in unarmed combat again if, after subjecting the boxer or kickboxer to a thorough examination by a physician licensed by the commission, the medical advisory panel determines the action is necessary to protect the health and welfare of the contestant.

(b) If a contestant receives an injury to the head or body, the contestant's license may be suspended indefinitely **based on increased risk for probably injury**. The ringside physician may require that a contestant suspended pursuant to this paragraph undergo a physical or neurological examination and submit a completed Medical Release Form or the Neurological Release Form as a condition of reinstatement.

(c)(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete in unarmed combat until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(d)(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(e)(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(f) A contestant subject to an order levying a medical suspension may appeal the medical suspension. **An appellant shall submit (by submitting) a written notice of appeal to the Commission within twenty (20) days of the Commission's order. The provisions of KRS Chapter 13B shall govern the proceedings.**

(2)(5)

(a) A female boxer or kickboxer shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female boxer or kickboxer shall be prohibited from competing if:

1. She is pregnant; or
2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the boxing or kickboxing show.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed \$1,000.

Section 22. Other Provisions.

(1) A promoter shall maintain an account with the recognized national database as identified by the commission and submit contestant's names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(2) All shows shall be video recorded and retained by the promoter for at least for one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(4) Alcohol shall be prohibited inside the six-foot area alongside the ring.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Boxing & Kickboxing Show Notice Form", May[June] 2023[November, 2019];

(b) "Boxing & Kickboxing Pre-Fight Medical Questionnaire", May[June] 2023[November, 2019];

(c) "Boxing & Kickboxing Pre-Fight Examination", May[June] 2023[November, 2019]; [and]

(d) "Boxing & Kickboxing Post-Fight Examination", May[June] 2023[November, 2019];[.]

(e) "Boxing & Kickboxing Medical Release Form", May[June] 2023; and

(f) "Boxing & Kickboxing Neurological Evaluation Form", May[June] 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at https://kbwc.ky.gov/New_Docs.aspx?cat=29&menuid=27 [<http://kbwa.ky.gov/Pages/Appsforms.aspx>].

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PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Commission (As Amended at ARRS, September 12, 2023)

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171,

STATUTORY AUTHORITY: KRS 229.025, 229.031, 229.111, 229.131, 229.171,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Commission to exercise sole direction, management, control, and jurisdiction over all unarmed combat shows in the Commonwealth[commonwealth]. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025 requires every licensee to be subject to administrative regulations promulgated by the commission. This administrative regulation establishes the requirements for mixed martial arts shows and for participants in mixed martial arts shows.

Section 1. Show Date.

(1) A promoter shall request a show date by completing and submitting to the commission the Mixed Martial Arts Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Mixed Martial Arts Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at https://kbwc.ky.gov/ppc_boxing/Ecal.aspx [<http://ins.kbwa.ky.gov/eeal.asp>]; or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. A contestant with repeated and unexcused absences or cancellation[a—cancellation] shall be assessed[result in] a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date.

Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. Bout approval does not exempt ~~contestants~~~~contestant~~ from individual physical approval as required by 201 KAR 27:008, Section 3. The commission's determination shall be based upon the contestants' previous fighting experience, including:

- (a) The number of bouts the contestants have competed in;
 - (b) The number of rounds the contestants have competed in;
 - (c) The date of the contestants' bouts;
 - (d) The contestants' performance in previous bouts, including the contestants' won-loss record;
 - (e) The level of competition the contestants have faced; and
 - (f) The contestants' medical histories.
- (4) The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as established in this section. If a ring official serves both as a referee and as a judge under Section 13(2)(a) of this administrative regulation, the official shall receive pay for both referee and judge services as established in this section. If a referee also serves as a judge other than as an in-ring judge, the referee shall only receive compensation as a referee as established in this section.

(a) A judge shall be paid at least the amount established in subparagraphs 1. and 2. of this subsection and set by the following schedule based on the number of bouts on the show card: [\$150 unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be \$100;]

- 1. One (1) to eleven (11) bouts, \$125; and
- 2. Twelve (12) or more bouts, \$175.

(b) A timekeeper shall be paid at least the amount established in subparagraphs 1. and 2. of this subsection and set by the following schedule based on the number of bouts on the show card: [\$100 unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;]

- 1. One (1) to eleven (11) bouts, \$100; and
- 2. Twelve (12) or more bouts, \$125.

(c) A physician shall be paid at least the amount established in subparagraphs 1. and 2. of this subsection and set by the following schedule based set by the following schedule based on the number of bouts on the show card: [\$350;]

- 1. One (1) to eleven (11) bouts, \$400; and
- 2. Twelve (12) or more bouts, \$500.

(d) A referee shall be paid at least the amount established in subparagraphs 1. and 2. of this subsection and set by the following schedule based on the number of bouts on the show card: [\$150; and]

- 1. One (1) to eleven (11) bouts, \$175; and
- 2. Twelve (12) or more bouts, \$225.

(e) A bout assistant shall be paid at least the amount established in subparagraphs 1. and 2. of this subsection and set by the following schedule based on the number of bouts on the show card: [seventy-five (75) dollars;]

- 1. One (1) to eleven (11) bouts, seventy-five dollars (\$75); and
- 2. Twelve (12) or more bouts, \$100.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)

(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least forty-eight (48) hours prior to the event.

(a) The results of these tests shall be no more than 365 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Mixed Martial Arts Pre-Fight Medical Questionnaire, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(b), under penalty of perjury.

(7) A contestant shall not assume or use the name of another and shall not change his or her ring name nor be announced by any name other than that appearing on his or her license, except upon approval of the inspector.

(8) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to instructions given by the inspector.

Section 5. The Cage.

(1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the commission.

(2) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission.

(3) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage. A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

(4) A bout or exhibition of mixed martial arts shall be held in a fenced area meeting the requirements established in this subsection.

(a) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(b) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(c) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(d) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(e) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

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(f) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(g) The fenced area shall have at least one (1) entrance.

(h) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(i) Any event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire cage.

(j) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the cage and cage equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels;

4. Rubber gloves; and

(d) A complete set of numbered round-cards, if needed.

(3) A scale used for any weigh-in shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains a metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall not wear shoes or any padding on his or her feet during the bout.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

Section 8. Weight Classes.

(1) The classes for contestants competing in bouts or exhibitions of mixed martial arts and the weights for each class shall be as established in the following schedule:

CLASS	WEIGHT
Strawweight	Up to and including 115 lbs.
Flyweight	Over 115 lbs. up to and including [Up to] 125 lbs.
Bantamweight	Over 125 lbs. up to and including [Up to] 135 lbs.
Featherweight	Over 135 lbs. up to and including [Up to] 145 lbs.
Lightweight	Over 145 lbs. up to and including [Up to] 155 lbs.
Super Lightweight	Over 155 lbs. up to and including 165 lbs.
Welterweight	Over 165 lbs. up to and including [Up to] 170 lbs.
Super Welterweight	Over 170 lbs. up to and including 175 lbs.
Middleweight	Over 175 lbs. up to and including [Up to] 185 lbs.
Super Middleweight	Over 185 lbs. up to and including 195 lbs.
Light Heavyweight	Over 195 lbs. up to and including 205 lbs. [Up to 195 lbs.]

Cruiserweight	Over 205 lbs. up to and including 225 lbs.
Heavyweight	Over 225 lbs. up to and including 265 lbs. [Up to 230 lbs.]
Super Heavyweight	Over 265 [230] lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. Unless the commission approves an exception upon finding that the health and safety of the contestants will not be compromised:

(1) A non-championship bout or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship bout of mixed martial arts shall not exceed five (5) rounds in duration;

(3) The length of a round in a professional bout or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a round shall be one (1) minute in duration; and

(4) The length of a round in an amateur bout or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a rest period following a round shall be ninety (90) seconds in duration.

Section 10. Judging and Scoring.

(1) Each judge of a bout or exhibition of mixed martial arts shall score the bout or exhibition and determine the winner through the use of the system established in this section.

(a) The better contestant of a round shall receive ten (10) points, and the opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) Fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the bout or exhibition, the announcer shall pick up the scores of the judges from the commission's representative.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)

(a) Once the commission's representative has checked the scores, he or she shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision.

(5) Unjudged exhibitions shall be permitted with the prior approval of the commission.

(6) A bout of mixed martial arts shall end in:

(a) Submission by:

1. Physical tap out; or

2. Verbal tap out;

(b) Technical knockout by the referee or physician stopping the bout;

(c) Decision via the scorecards, including:

1. Unanimous decision;

2. Split decision;

3. Majority decision; or

4. Draw, including:

a. Unanimous draw;

b. Majority draw; or

c. Split draw;

(d) Technical decision;

(e) Technical draw;

(f) Disqualification;

(g) Forfeit; or

(h) No contest.

Section 11. Fouls.

(1) The following acts shall constitute fouls in mixed martial arts:

- (a) Butting with the head;
- (b) Eye gouging;
- (c) Biting;
- (d) Hair pulling;
- (e) Fishhooking;
- (f) Groin attacks;
- (g) Putting a finger into any orifice or into any cut or laceration on an opponent;
- (h) Small joint manipulation;
- (i) Striking to the spine or the back of the head;
- (j) Striking downward using the point of the elbow;
- (k) Throat strikes including grabbing the trachea;
- (l) Clawing, pinching, or twisting the flesh;
- (m) Grabbing the clavicle;
- (n) Kicking the head of a grounded opponent;
- (o) Kneeing the head of a grounded opponent;
- (p) Stomping the head of a grounded opponent;
- (q) Kicking to the kidney with the heel;
- (r) Spiking an opponent to the canvas on his or her head or neck;
- (s) Throwing an opponent out of the fenced area;
- (t) Holding the shorts of an opponent;
- (u) Spitting at an opponent;
- (v) Engaging in unsportsmanlike conduct;
- (w) Holding the fence;
- (x) Using abusive language in the fenced area;
- (y) Attacking an opponent on or during the break;
- (z) Attacking an opponent who is under the care of the referee;
- (aa) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;
- (bb) Intentionally disregarding the instructions of the referee;
- (cc) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;
- (dd) Interference by a contestant's corner staff; and
- (ee) The throwing by a contestant's corner staff of objects into the cage during competition.

(2) If a contestant fouls his or her opponent during a bout or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from his or her score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his or her determination on the severity of the foul and its effect upon the opponent.

(3) If the referee determines that it is necessary to deduct a point or points because of a foul, he or she shall warn the offender of the penalty to be assessed.

(4) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(5) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

(6)

(a) If a bout or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the commission's representative of his or her determination that the foul was or was not accidental.

(7) If the referee determines that a bout or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout or exhibition shall be declared a no bout if the foul occurs during:

- (a) The first two (2) rounds of a bout or exhibition that is scheduled for three (3) rounds or less; or
- (b) The first three (3) rounds of a bout or exhibition that is scheduled for more than three (3) rounds.

(8) If an accidental foul renders a contestant unable to continue the bout or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout or exhibition that is scheduled for more than three (3) rounds.

(9) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout or exhibition.

(10) A contestant committing an intentional foul may be issued a violation by an inspector.

Section 12. Prohibitions. The following shall be prohibited:

- (1) Battle royal type events; and
- (2) Use of excessive grease or other substance that may handicap an opponent.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the commission. The following shall be required:

(a) Three (3) judges, or two (2) judges if a referee also serves as a judge;

(b) One (1) timekeeper;

(c) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(d) One (1) referee, unless more than eight (8)~~eighteen (18)~~ bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining whether or not:

- (a) A foul has been committed;
- (b) Each contestant is competing in earnest; and
- (c) There is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by sounding a horn or striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Mixed Martial Arts Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Mixed Martial Arts Pre-Fight Examination, ~~[which is incorporated by reference in 201 KAR 27:011, Section 23(1)(c),]~~ that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout or match.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver the form Mixed Martial Arts Post-Fight Examination, ~~[which is incorporated by reference in 201 KAR 27:011, Section 23(1)(d),]~~ that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each match or bout, and any other matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector.

(2) If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a match or bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)

(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who

commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.

(a) The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout or match.

(b) The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout or match at any time if the referee has reasonable grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;

2. Not competing in earnest; or

3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout or match except upon failure of a contestant to obey the referee's instructions or to protect a contestant.

(g) The referee shall decide all questions arising during a bout or match that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

(h) Events scheduled to include more than eight (8) bouts shall require the presence of at least two (2) referees. One (1) referee shall be designated to oversee each bout.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) The executive director, the executive director's designee, or a commission representative may issue an order for a medical suspension of a contestant's license as established in paragraphs (a) through (f) of this subsection, under the following circumstances:

(a) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting the contestant to a thorough examination by a physician licensed by the commission, the medical advisory panel determines action is necessary to protect the health and welfare of the contestant.

(b) If a contestant receives an injury to the head or body, the contestant's license may be suspended indefinitely based on increased risk for probably injury. The ringside physician may require that a contestant suspended pursuant to this paragraph undergo a physical or neurological examination and submit a completed Medical Release Form or the Neurological Release Form as a condition of reinstatement.

(c)[(2)] A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete again until the contestant has been evaluated and

subsequently cleared for further competition by the medical advisory panel.

(d)(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(e)(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(f) A contestant subject to an order levying a medical suspension may appeal the medical suspension. **An appellant shall submit by submitting** a written notice of appeal to the Commission within **twenty (20) days of the Commission's order. The provisions of KRS Chapter 13B shall govern the proceedings.**

(2)(5)

(a) A female mixed martial artist shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the match that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female mixed martial artist shall be prohibited from competing if:

1. She is pregnant; or

2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the mixed martial arts event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4)

(a) The deductible expense under the policy for a professional mixed martial artist shall not exceed \$1,000.

(b) The deductible expense for an amateur mixed martial artist shall not exceed \$500.

Section 22. Other Provisions.

(1) A contestant shall not compete against a member of the opposite gender.

(2) Each show shall be video recorded and retained by the promoter for at least one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) A promoter shall maintain an account with the recognized national database as identified by the commission and shall submit ~~contestants~~[contestants] names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(4) A bout or exhibition of mixed martial arts shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(a) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(b) The sponsoring organization or promoter shall file a copy of the rules that shall apply at the show with the commission along with the thirty (30) day show notice required in Section 1 of this administrative regulation.

(5) A contestant shall report to and be under the general supervision of an inspector in attendance at the show and shall be subject to instructions given by an inspector.

(6) More than two (2) fifteen (15) minute intermissions shall not be allowed at any show.

Section 23. Prohibitions and Restrictions.

(1) The following shall be prohibited:

(a) Battle royal type events;

(b) Use of excessive grease or other substance that may handicap an opponent; and

(c) Elbow strikes to the head if the bout is an amateur bout.

(2) Knees to the head shall be permitted, but shall only be used and delivered from a standing position.

(3) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall have his or her license suspended for a period of not less than one (1) year.

(4) A promoter who allows a professional to compete against an amateur shall have his or her license suspended for a period of not less than one (1) year.

(5) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(6) Alcohol shall be prohibited inside the six (6) foot area alongside the ring.

Section 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Mixed Martial Arts Show Notice Form", June 2023;

(b) "Mixed Martial Arts Pre-Fight Medical Questionnaire", June 2023;

(c) "Mixed Martial Arts Pre-Fight ~~Medical~~ Examination", June 2023;

(d) "Mixed Martial Arts Post-Fight Examination", June 2023;

(e) "Mixed Martial Arts Medical Release Form", June 2023;

(f) "Mixed Martial Arts Neurological Evaluation Form", June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St. 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at https://kbwc.ky.gov/New_Docs.aspx?cat=29&menuid=27.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (As Amended at ARRS, September 12, 2023)

202 KAR 7:555. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190, 29 C.F.R. 1910.1030
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of ~~Medical Licensure~~[Emergency Medical Services] or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies.

(1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Delete application in the Kentucky Emergency Medical Services Information System (KEMSIS), no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4)(a) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary

basis while a permitted vehicle is out of service. The agency shall complete an Add TEMPORARY Vehicle/Aircraft Part 1 application in KEMSIS within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Add TEMPORARY Vehicle/Aircraft Part 2 application in KEMSIS within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined \$500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

- (a) Disasters;
- (b) Mass casualty incidents; or
- (c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements.

(1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority; and

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions if:

a. There is an equipment failure, a communication barrier, or

other unusual circumstance; and

b. It is not possible to contact online medical direction;

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) 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, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS Do Not Resuscitate (DNR), or Medical Orders for Scope of Treatment (MOST) form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch protocols;

4. Vehicle operations and vehicle safety;

5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of \$1,000,000; and

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. ~~The~~These reports shall be maintained by the owner of the licensed agency or a contracted third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers

employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency, ~~[shall]~~ in the county in which the agency's base station or a satellite is located, ~~shall~~:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours a day, seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

~~[(4)] A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.]~~

~~[(4)]~~[(5)] A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.

~~[(5)]~~[(6)] A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.

~~[(6)]~~[(7)] Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received ~~[from the dispatch center]~~ shall request that~~[notify]~~ the next closest appropriate licensed agency ~~[to respond]~~.

[(7)] If an agency licensed for a specific geographical service area is unable to respond to a non-emergency call within two (2) hours from the initial time a non-emergency call is received, the requesting healthcare facility may contact any licensed agency and request that the agency conduct the transport.

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. ~~The~~~~[These]~~ agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including advanced life support (ALS) or basic life support (BLS) medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical

direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response ~~[(i)]~~

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall, ~~[state]~~ at a minimum, ~~[that]~~:

(a) ~~State that~~ requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) ~~State that~~ if the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) ~~[The agreement shall]~~ Specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for emergency service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

[(14)] Each licensed Class I ground agency shall schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

~~[(15)]~~[(44)] An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

~~[(16)]~~[(45)] An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

~~[(17)]~~[(46)] An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

~~[(18)]~~[(47)] This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

~~[(19)]~~[(48)] A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (f)

of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the Federal Communications Commission (FCC). Copies of the current FCC licenses shall be on file in the agency office.

(b) Each ambulance shall have an operational push-to-talk two-way radio programmed with all very high frequency (VHF) Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with a minimum of one (1) mobile two-way radio located in the driver's compartment.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two-way radios capable, under normal conditions, of operating on the agency, dispatch center, mutual aid, and hospital frequencies.

(e) Each ambulance shall be equipped with two-way radio communication equipment with the ability to communicate from the driver's compartment and patient care compartment.

(f) One (1) alternative method of two-way communication may be substituted for one (1) portable two-way radio.

Section 4. Ceasing Continuous Service.

(1) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board office within twenty-four (24) hours of the agency ceasing to provide continuous service.

(2) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency shall/will cease providing continuous service, and shall provide the approximate date and time that the agency shall/will cease continuous service.

(3) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency has ceased providing continuous service, and shall provide the date and time that the agency ceased continuous service.

(4) Notwithstanding subsection (1) of this section and Section 3(1) of this administrative regulation, a Class I, II, III, VI, or VII agency shall resume continuous service no later than seventy-two (72) hours after ceasing continuous service if the executive director of the board determines, in writing, that:

(a) Circumstances beyond the agency's control exist which justify the agency's temporary lapse in continuous service; and

(b) Public health, safety, and welfare will be better served by allowing the agency to resume continuous service within seventy-two (72) hours after ceasing continuous service.

(5) A licensed Class I, II, III, VI, or VII agency that ceases continuous service shall be deemed to pose a threat to the public and the agency's license shall be temporarily suspended in accordance with KRS 311A.075 if:

(a) The agency fails to surrender its license in accordance with subsection (1) of this section; and

(b) The executive director of the board does not make the determinations set forth in subsection (4)(a) and (b) of this section; or

(c) The executive director of the board makes the determinations set forth in subsection (4)(a) and (b) of this section, but the agency fails to resume continuous service within seventy-two (72) hours after ceasing continuous service and fails to surrender its license to the board office within seventy-two (72) hours after ceasing continuous service.

Section 5. Issuance of Temporary Class I Hardship Licenses to Counties.

(1) The board office shall issue a temporary Class I hardship license to the county or counties listed as the geographic service area on a Class I license that:

(a) Is the only Class I license for the geographic service area; and

(b) Is surrendered in accordance with Section 4(1) of this administrative regulation; or

(c) Is temporarily suspended in accordance with Section 4 of this

administrative regulation and KRS 311A.075.

(2) A temporary hardship license shall not be transferrable.

(3) A county issued a temporary hardship license may contract with a licensed Class I agency to provide service to the geographic service area listed on the temporary hardship license.

(4) Notwithstanding Sections 3(1) and 4(1) of this administrative regulation, a county issued a temporary hardship license shall begin providing continuous service no later than 120 days after the license is issued.

(5) Notwithstanding any other administrative regulation promulgated by the board, for up to and not exceeding 120 days after a temporary hardship license is issued to a county under this section, the county may request that any licensed Class I agency respond to a call for service in the geographic service area listed on the temporary hardship license.

(6) A temporary hardship license shall expire one (1) year after the license is issued, after a new Class I license for the geographic service area is issued, or, if the Class I license for the geographic service area was temporarily suspended in accordance with Section 4 of this administrative regulation, after that license is reinstated, whichever occurs first.

Section 6. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of \$100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to \$500 per day after thirty (30) calendar days.

Section 7.[Section–5.] Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 8.[Section–6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012) found at <https://kwiec.ky.gov/SiteCollectionDocuments/KYFOG.pdf>;

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMMS/NEMSISDataDictionary.pdf;

(c) "Vehicle Delete application in KEMSIS", (12/2019);

(d) "Add TEMPORARY Vehicle/Aircraft application Part 1 in KEMSIS", (12/2019); and

(e) "Add TEMPORARY Vehicle/Aircraft application Part 2 in KEMSIS", (12/2019).

(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[418 James Court, Suite 50, Lexington, Kentucky 40505], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at: kyems.com.

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(As Amended at ARRS, September 12, 2023)

302 KAR 16:010. Business registration and permit[Business Identification Number] for amusement rides or attractions.

RELATES TO: KRS 247.234

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) and ~~(6) [(3)(a)]~~ require the ~~[Commissioner of the Department of Agriculture to promulgate administrative regulations for the process for registering a business and applying for an amusement ride or attraction permit.]~~ of application for a business identification number. This administrative regulation establishes the criteria for ~~registering a business and obtaining a permit[business identification number]~~ to operate an amusement ride or attraction.

Section 1. Definition. "Permit"["Business identification number"] means a number identifying ~~[the individual or business entity owner of an amusement ride or amusement attraction and]~~ the specific ride or attraction to which it is assigned.

Section 2. A ~~permit[unique business identification number]~~ shall be required to operate each applicable amusement ride or amusement attraction in this state, and shall be valid for ~~the remainder of the calendar[one (1)]~~ year from the date of issuance~~], in accordance with KRS 247.234(3)(a)(2)].~~ A ~~permit[business identification number]~~ shall not be transferred or assigned.

Section 3. Procedure for Registering a Business. Every owner of an amusement ride or attraction seeking to operate in Kentucky shall submit:

- (1) An Amusement Ride and Attraction[A] Business Registration Form[Application]; and
- (2) A Business Registration Fee of fifty (50) dollars.

Section 4.~~[Section—3.]~~ Procedure for Obtaining a Permit[~~business identification number~~].

(1) Every owner of an amusement ride or ~~[amusement] attraction~~ seeking to operate in Kentucky shall submit ~~[a business identification number]~~:

- (a) An Amusement Ride and Attraction[A] Permit Application Form for rides and attractions;~~[along with]~~
- (b) A permit fee of five (5) dollars for each ride or device; and
- (c) The fee for each required initial safety inspection required by 302 KAR 16:020.

(2)

(a) The owner of the amusement ride or ~~[amusement] attraction~~ shall provide a written itinerary indicating:

1. The location of the first setup;
2. All future operating dates and locations, including addresses;
3. The operating period at each location;
4. The names of all rides requiring initial safety inspections pursuant to KRS 247.234(3)~~(e) [(b)]~~; and
5. All rides or attractions being operated at each location.

(b) The itinerary shall be submitted[delivered] to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing immediately if cancellations are made or additional locations added.

(c) The itinerary shall be submitted:

1. Via the online portal at <https://kyaqr-apps.com/AqExternal/Security/Account/Login; or>
2. In writing, including by facsimile or electronic mail, by using:
 - a. The Itinerary Mobile Operators form; or
 - b. The Itinerary Permanent Fixed Locations form.

(3) Except as established in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of at least \$1,000.00[\$500,000] per occurrence for bodily injury or death, for each amusement ride or amusement attraction.

(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without at least thirty (30) days written notice to the ~~department[commissioner]~~.

(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:

1. A listing of all amusement rides and amusement attractions insured; or

2. A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered in the policy.

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, the applicant may, instead of providing proof of liability insurance, provide proof of financial responsibility in at least the amount of \$1,000,000[\$500,000] on or before the date of the initial safety inspection. Proof of financial responsibility shall be shown by:

(a) Proof of liability insurance of at least \$1,000,000[\$500,000] per occurrence for bodily injury or death;

(b) A financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to the application date, indicating a net worth of at least \$1,000,000[\$500,000] or more in assets located in the state; or

(c) An irrevocable letter of credit to the department in the amount of at least \$1,000,000[\$500,000].

Section 5.~~[Section 4.]~~ Upon receipt of a complete application, applicable fees, proof of liability insurance or financial responsibility, and a complete itinerary, a ~~permit[business identification number]~~ shall be issued ~~to [in the name of]~~ the applicant.

[(1)] If all items required by this section are not physically available to the inspector when the initial safety inspection takes place, the inspector shall not perform the initial safety inspection and a ~~permit[business identification number]~~ shall not be issued.

[(2)] ~~[The business identification number certificate shall be available for inspection at all times.]~~

[(3)] ~~[If the business identification number holder is operating in multiple locations, a clear and legible copy of the business identification number shall be displayed.]~~

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

(1) The following material is incorporated by reference:

(a) "Amusement Ride and Attraction Business Registration Form", 6/23;

(b) "Amusement Ride and Attraction Permit[Business Identification Number] Application Form[for Rides and Attractions]", 6/23[08/08];

(c) ~~[(b)]~~ "Itinerary Mobile Operators", 03/03; and

(d) ~~[(e)]~~ "Itinerary Permanent Fixed Locations", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://kyaqr.com/consumer/amusement-rides.html>.

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GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(As Amended at ARRS, September 12, 2023)

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234~~[(3)]~~, 247.236(3)

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)~~(e)~~ requires[(b) and (d) require] the department to promulgate administrative regulations establishing initial safety

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inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions.

(1) "Air inflatable device" means an object that is filled with air that is supplied continuously by an electric motor-driven blower.

(2) "Dark ride" means an amusement ride or amusement attraction enclosed and with the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(3) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle that travels the fixed path.

(4) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.

(5) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(6) "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(7) "Play port" means an object designed for use by children on which a child can swing, walk, climb, or slide, and that follows a fixed path.

(8) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(9) "Walk through" means a fun house or glass house that is nonmechanized and self-propelled.

(10) "Water ride" means an amusement ride or amusement attraction that uses water as a means of propulsion and includes bumper boats and water park slides that are in excess of fifteen (15) feet at the highest point of the slide.

(11) "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2.

(1) All amusement ~~rides[ride]~~ and amusement attractions operating in Kentucky shall bear ~~a Kentucky permit[an initial safety inspection]~~ seal. Following and passing an initial safety inspection, ~~a Kentucky permit[an initial safety inspection]~~ seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required ~~Kentucky permit[initial safety inspection]~~ seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of an initial inspection is provided.

Section 3. Initial safety inspection fees, and any required re-inspection fees, shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as established in subsections (1) through (12) of this section.

(1) Air inflatable devices shall be fifty (50) dollars.

(2) Kiddie rides shall be seventy-five (75) dollars.

(3) Play ~~ports[port]~~ shall be seventy-five (75) dollars.

(4) Water rides shall be seventy-five (75) dollars.

(5) Dark rides shall be seventy-five (75) dollars.

(6) Walk throughs and glass houses shall be seventy-five (75) dollars.

(7) Tracked trains shall be \$100.

(8) Go-cart ~~facilities[facility]~~ shall be \$125.

(9) Major rides shall be \$150.

(10) Steel roller ~~coasters[coaster]~~ shall be \$200.

(11) Wooden roller ~~coasters[coaster]~~ shall be \$300.

(12) Any amusement ride or amusement attraction not listed in this section shall be \$150.

(13) Re-inspection as established in KRS 247.234(4)(a).

(a) Re-inspection fees shall be assessed as established in paragraph (b)1. through 12. of this subsection.

(b)

1. Air inflatable devices shall be \$100.

2. Kiddie rides shall be \$150.

3. Play ~~ports[port]~~ shall be \$150.

4. Water rides shall be \$150.

5. Dark rides shall be \$150.

6. Walk throughs and glass houses shall be \$150.

7. Tracked trains shall be \$200.

8. Go-cart ~~facilities[facility]~~ shall be \$250.

9. Major rides shall be \$300.

10. Steel roller ~~coasters[coaster]~~ shall be \$400.

11. Wooden roller ~~coasters[coaster]~~ shall be \$500.

12. Any amusement ride or amusement attraction not listed in this paragraph shall be \$300.

Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection.

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GENERAL GOVERNMENT

Department of Agriculture

Office of the Consumer and Environmental Protection

(As Amended at ARRS, September 12, 2023)

302 KAR 16:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.

RELATES TO: KRS 247.232, 247.234, 247.236

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes ~~the Commissioner of~~ the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.

Section 1. Definition. "Immediately correctable violation" means a violation ~~that[which]~~ can be corrected on the day of ~~an~~[the initial] inspection.

Section 2. The department's inspector shall determine the nature and severity of violations and shall determine if the violations are not immediately correctable based on the manufacturer's standards, KRS 247.232 through 247.236, and 302 KAR 16:010 through 302 KAR 16:140.

Section 3. A violation issued for operation of an amusement ride or amusement attraction without a valid ~~permit shall[may]~~business identification number shall be considered a violation ~~that[which]~~ is not immediately correctable.

Section 4. A safety inspector may order closed a unit or ~~section[portion]~~ of a ride ~~that[which]~~ fails to comply with safety or operational guidelines, if closure of ~~that section of~~ the ride does not affect the remaining ~~units or sections[portion]~~ of the ride, by placing upon that unit or ~~section[portion]~~ of the ride a section stop order. The owner shall notify the department when the unit or ~~section[portion]~~ of the ride has been repaired to ~~provide the department with~~[obtain] information ~~in support of a~~[for] section stop order removal.

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GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(As Amended at ARRS, September 12, 2023)

302 KAR 16:071. Repeal of 302 KAR 16:070.

RELATES TO: KRS ~~247.232 - 247.236~~~~[CHAPTER 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27]~~

STATUTORY AUTHORITY: KRS ~~247.233~~~~[363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires amusement ride and attraction owners to notify the department~~[submit a written report]~~ following an accident. This administrative regulation repeals 302 KAR 16:070 because 302 KAR 16:072 will cover the reporting criteria.

Section 1. 302 KAR 16:070~~[,]~~ Reports of injuries involving amusement rides and amusement attractions, is hereby repealed.

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GENERAL GOVERNMENT
Department of Agriculture
Office of Consumer and Environmental Protection
(As Amended at ARRS, September 12, 2023)

302 KAR 16:072. Notification of occurrence involving an amusement ride or attraction.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires amusement ride and attraction owners to notify the department following an accident or specified incident and requires the department to conduct mandatory investigations of amusement ride and attraction accidents and incidents. This administrative regulation establishes requirements for the owner to notify the department of an occurrence involving an amusement ride or attraction~~[notification]~~.

Section 1. Definition. "Damage" means structural, mechanical, or electrical failure of an amusement ride or attraction.

Section 2. Method of Notification and Information Required.

(1) Within twelve (12) hours of an occurrence described in KRS 247.233(1), the owner of an amusement ride or attraction involved in the occurrence shall notify the department by e-mail at agr.rides@ky.gov or via the portal at <https://www.kyagr-apps.com/AgExternal/Security/Account/Login>.

(2) The notification shall contain the following information:

- (a) The date and time of the incident or accident;
- (b) The location of the incident or accident;
- (c) A description of the incident, accident, or damage to the amusement ride or attraction;
- (d) The name, address, and telephone number of the owner or company for the amusement ride or attraction involved;
- (e) The name, address, and telephone number of each operator of the amusement ride or attraction involved;
- (f) The name, permit number, serial number, and manufacturer of the amusement ride or attraction involved;
- (g) The name, address, telephone~~[phone]~~ number, and age of the injured person, if known;
- (h) The nature and extent of the injury, if known;
- (i) A statement by the owner of whether the injury was caused by the amusement ride or attraction;
- (j) The name and location of the facility or person providing medical treatment other than first aid; and
- (k) The name, address, and telephone number of the person submitting the notification.

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GENERAL GOVERNMENT
Department of Agriculture
Office for Consumer and Environmental Protections
(As Amended at ARRS, September 12, 2023)

302 KAR 33:010. Grain dealers and grain warehouse operators.

RELATES TO: KRS ~~251.010, 251.340, 251.355, 251.365, 251.375, 251.380, 251.440, 251.470, 251.990~~

STATUTORY AUTHORITY: KRS 251.020, ~~251.355, 251.370(9), 251.375(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 251.355 requires grain dealers and grain warehouse operators to be licensed by the department. KRS 251.020 authorizes the department to promulgate administrative regulations necessary to administer and enforce KRS Chapter 251. KRS 251.355(8) and (9) require the department to establish a schedule of fees. KRS 251.375(4) requires the department to establish the minimum information required to be included in a forward pricing contract. This administrative regulation establishes licensure, purchasing, and storage requirements for grain dealers and grain warehouse operators.~~[The administrative regulation established the rules for administration and enforcement of the provisions of KRS Chapter 251.]

Section 1. Licenses.

(1) To apply for a grain dealer or grain warehouse operator license, an applicant shall mail a completed Application for Grain Dealer/Warehouse License, the fee required by Section 2 of this administrative regulation, and the attachments required by the application form to the address at the top of the form.

(2) In accordance with KRS 251.355, each person acting as a grain dealer or grain warehouse operator who operates more than one (1) facility shall have a separate license for each facility when each facility is operated as separate business establishment.

(3)~~[(2)]~~ All licenses shall be posted in a location at each business establishment that is easily viewable by customers and the public.

(4)~~[(3)]~~ All grain warehouse operators licensed under the United States Warehouse Act, 7 U.S.C. 241 et seq., and operating in Kentucky shall also be required to hold a valid Kentucky Grain Warehouse Operator's license.

(5)(a) Grain dealer and grain warehouse operator licenses shall be renewed by July 1 each year.

(b) The licensee shall mail a completed Application for Grain Dealer/Warehouse License, the fee required by Section 2 of this administrative regulation, and any attachments required by the form to the address at the top of the form.

Section 2. License Fee Schedule. License fees for grain dealers and grain warehouse operators shall be based upon the number of bushels purchased by the dealer or warehouse operator during the previous year.

(1) The license fee schedule for grain dealers shall be:

(a) From 0 - 5,999 bushels~~[, your fee will be]~~: seventy-five (75) dollars.

(b) From 6,000 - 99,999 bushels: \$150.

(c) From 100,000 - 1,999,999 bushels: \$300.

(d) From 2,000,000 - 5,999,999 bushels: \$450.

(e) From 6,000,000 - 9,999,999 bushels: \$600.

(f) From 10,000,000 bushels or more: \$750.

(2) The license fee schedule for grain warehouse operators shall be:

(a) Under 2,000,000 bushels~~[, your fee will be]~~: \$300.

(b) From 2,000,000 - 5,999,999 bushels: \$450.

(c) From 6,000,000 - 9,999,999 bushels: \$600.

(d) 10,000,000 bushels or more: \$750.

Section 3. Forward Pricing Contracts. All forward pricing contracts used in Kentucky shall contain the following information that/which includes, at a minimum:

- (1) Date of agreement;
- (2) Agreement number;
- (3) Description of the commodities under agreement;
- (4) A statement that the seller freely sells and delivers to the buyer listed commodities on which the price is to be established at a later date and the seller pledges the commodities delivered pursuant to the agreement shall be free of any lien or encumbrance;
- (5) A statement that the seller understands that ownership is being transferred to the buyer upon delivery, and that after delivery the seller becomes a creditor of the buyer for the fair market value of the delivered commodities until the price is established and settlement is completed, and if the buyer defaults on the obligation for settlement, the seller may be held as an unsecured creditor of the buyer for the value of the commodities;
- (6) A statement that upon demand of the seller, the buyer is obligated to pay the regular bid price upon the date of demand for the delivered commodities being priced by the seller less any service charge due to the buyer, and the buyer shall pay the same price as the buyer is bidding for like commodities being delivered for sale on that date by other sellers;
- (7) A statement that for services rendered in connection with the agreement the seller shall be liable to the buyer for forward price charges printed on a scale ticket;
- (8) A statement that each scale ticket marked for forward price becomes a part of the agreement between the seller and the buyer; and
- (9) The name, contact information, and signature of the seller and buyer.

Section 4. Temporary Storage Structures.

- (1) To ease demand on approved warehouse space for a single crop year, the department may authorize other storage structures/facilities as temporary storage structures by a Kentucky licensed grain warehouse.
- (2) Grain stored in temporary storage structures may be used to cover storage obligations, forward pricing obligations, or otherwise be counted as an asset from the date of authorization until the following March 31. Grain held in temporary storage beginning April 1 shall not count as an asset during a KDA inspection.
- (3) Authorization for temporary storage by the department may be granted if the following conditions are met:
 - (a) Requests for temporary storage shall be in writing and shall receive prior approval of the department before use.
 - (b) The identity of the grain placed in temporary storage shall be preserved by a unique or identifying mark that appears on the receipt.
 - (c) The structure to be used for temporary storage shall meet the following requirements:
 1. Have a solid floor;
 2. Have rigid self-supporting walls;
 3. Provide adequate aeration;
 4. Have acceptable covering; and
 5. Be fully insured against loss of grain.
 - (d) The warehouse operator shall meet all financial and bonding requirements established by KRS Chapter 251 and this administrative regulation.
 - (e) The warehouse operator shall maintain a separate record of all grain stored in a temporary structure and show daily balance as part of the daily position record.
 - (f) The warehouse operator shall move the grain in temporary storage by sale or into their department licensed warehouse by:
 1. March 31 following initial warehouse licensing for fund covered grain; or
 2. Other later dates, as mutually agreed upon/established by the warehouse operator and the department.
 - (g) Grain stored in temporary storage may/can be considered part of commingled inventory to cover storage or forward pricing obligations.

Section 5. Emergency Storage. Authorization for emergency storage may be granted by the department if the following conditions are met:

- (1) The warehouse operator provides written justification that a need for emergency storage exists for the current crop year in the local area including the exact location, kind of grain to be stored, and the quantity of grain requested to be placed in emergency storage.
- (2) The warehouse operator receives authorization from the Department before using emergency storage space.
- (3) The warehouse operator moves the grain in emergency storage by sale or into their department licensed warehouse by:
 - (a) March 31 following initial warehouse licensing for fund covered grain; or
 - (b) Other later dates, as mutually agreed upon/established by the warehouse operator and the department.
- (4) Grain held in emergency storage shall not count as an asset for purposes of a KDA inspection.

Section 6. Producer Payment Responsibility.

- (1) For purposes of Kentucky grain insurance fund coverage eligibility, in any grain transaction the entity that is responsible for payment to the producer shall be deemed to be a grain dealer, without regard to intermediaries or transporters.
- (2) For purposes of Kentucky grain insurance fund coverage eligibility, ownership of grain shall be deemed to transfer the first time when that grain is delivered or weighed on a Department-approved scale.
- (3) A claim arising from a transaction that did not conform to the requirements of this section [6-] shall not be eligible for Kentucky grain insurance fund coverage.

Section 7. Violation Review and Appeal. All appeals shall be conducted in accordance with KRS Chapter 13B.

Section 8. Incorporation by Reference.

- (1) "Application for Grain Dealer/Warehouse License", September/April 2023, is incorporated by reference.
- (2) This material/These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://kyaqr.com/consumer/grain-licensing-and-regulation.html>.

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(As Amended at ARRS, September 12, 2023)

921 KAR 3:095. Elderly Simplified Application Project or "ESAP".

RELATES TO: 7 C.F.R. 273.2, 273.10

STATUTORY AUTHORITY: KRS 194A.050(1), 205.1783, 7 C.F.R. 271.4

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 implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.1783(1)(b) requires the cabinet to request a waiver from the United States Department of Agriculture to implement an Elderly Simplified Application Project for individuals who have not earned income and who are over sixty (60) years of age or who are disabled. KRS 205.1783(f) requires the cabinet to promulgate administrative regulations necessary to administer this

section. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Elderly Simplified Application Project (ESAP), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions.

- (1) "Elderly Simplified Application Project" or "ESAP" means a SNAP program for individuals who are age sixty (60) and older or disabled, with no earned income.
- (2) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures established in:
 - (a) 921 KAR 3:020, Financial requirements;
 - (b) 921 KAR 3:027, Technical requirements;
 - (c) 921 KAR 3:030, Application process; and
 - (d) 921 KAR 3:035, Certification process.
- (3) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

Section 2. ESAP Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to ESAP, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for ESAP.

- (1) With the exception established in subsection (4) of this section, an individual shall qualify for ESAP benefits if the individual:
 - (a) Is a Kentucky resident;
 - (b) Is:
 1. Age sixty (60) or older; or
 2. Disabled;
 - (c) Has no earned income; and
 - (d) Is not institutionalized.
- (2) If an individual who otherwise meets the requirements established in subsection (1) of this section resides with an individual who is not a member of the applicant's household as defined in 921 KAR 3:010, the individual shall be eligible if food is purchased and prepared separately.
- (3) The cabinet shall use available computer matches to verify an applicant's marital and institutional status.
- (4) Except as permitted by subsection (6) of this section, if a household member does not meet the criteria established in subsection (1) or (2) of this section, the household:
 - (a) Shall not be eligible for ESAP; and
 - (b) May apply for regular SNAP benefits in accordance with 921 KAR 3:030.
- (5) An individual shall not receive ESAP benefits and regular SNAP benefits at the same time.
- (6) A child under the age of eighteen (18) who resides with an individual who is eligible for ESAP may be included in the household.

Section 4. ESAP Application Process.

- (1) ESAP eligibility shall be reviewed when an application for SNAP benefits is completed and submitted to the cabinet.
- (2) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) calendar days of the date the application required by subsection (1) is submitted to the cabinet.

Section 5. ESAP Certification Process.

- (1) The cabinet shall process a SNAP application pursuant to 921 KAR 3:030.
- (2) Information necessary to certify a household for ESAP shall be obtained from computer matches, with the exception of information considered questionable.
- (3) The cabinet shall certify an eligible household for ESAP

benefits for thirty-six (36) months, with a reminder notice of change reporting requirements sent in the 11th month and 23rd month of the certification period.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice of certification or denial.

(5) In the month preceding the last month of the household's certification period, the cabinet shall send a program participant an "ESAP-2, Elderly Simplified Assistance ~~Project~~**Program** (ESAP) Recertification," which shall be submitted to the cabinet prior to the end of the certification period for consideration of continued eligibility.

Section 6. ESAP Benefits.

- (1) The cabinet shall notify an ESAP household of their approved monthly benefit amount.
- (2) The ESAP benefit amount shall be based on:
 - (a) Shelter costs;
 - (b) Household size; and
 - (c) Medical expenses.

Section 7. Changes in Household Circumstances.

- (1) A household receiving ESAP benefits shall be required to report changes to the cabinet that result in an individual no longer meeting the eligibility requirements of Section 3 of this administrative regulation within ten (10) calendar days.
- (2) The cabinet shall process changes in household circumstances based on information received from computer matches.
- (3) If information voluntarily reported by the household is contradictory to computer match data, the cabinet shall not act upon the information until the next recertification unless the information is a change in a household member's:
 - (a) Name;
 - (b) Date of birth; or
 - (c) Address.
- (4) If a change in household circumstances results in a change in the benefit amount, the cabinet shall provide the household with notice of the change.

Section 8. Incorporation by Reference.

- (1) "ESAP-2, Elderly Simplified Assistance ~~Project~~**Program** (ESAP) Recertification," 06/23, 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 department's Web site at <https://chfs.ky.gov/agencies/dcbcs/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

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amended After Comments)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

- (1) Application for initial pharmacist license - \$150;
- (2) Application and initial license for a pharmacist license by license transfer - \$250;
- (3) Annual renewal of a pharmacist license - ninety-five (95) dollars;
- (4) Delinquent renewal penalty for a pharmacist license - ninety-five (95) dollars;
- (5) Annual renewal of an inactive pharmacist license - ten (10) dollars;
- (6) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;
- (7) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;
- (8) Application for a permit to operate a pharmacy - ~~\$150~~[\$125];
- (9) Renewal of a permit to operate a pharmacy - ~~\$150~~[\$125];
- (10) Delinquent renewal penalty for a permit to operate a pharmacy - ~~\$150~~[\$100] dollars;
- (11) Change of location or change of ownership of a pharmacy or manufacturer permit - ~~\$150~~[seventy-five (75) dollars];
- (12) Application for a permit to operate as a manufacturer - ~~\$150~~[\$125];
- (13) Renewal of a permit to operate as a manufacturer - ~~\$150~~[\$125];
- (14) Delinquent renewal penalty for a permit to operate as a manufacturer - ~~\$150~~[\$125];
- (15) Change of location or change of ownership of a wholesale distributor license - ~~\$150~~[seventy-five (75) dollars];
- (16) Application for a license to operate as a wholesale distributor - ~~\$150~~[\$125];
- (17) Renewal of a license to operate as a wholesale distributor - ~~\$150~~[\$125];
- (18) Delinquent renewal penalty for a license to operate as a wholesale distributor - ~~\$150~~[\$125]; and
- (19) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars;

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

- (a) "Application for Non-Resident Pharmacy Permit, Form 3, 9/2023;[6/2023]
- (b) Application for Non-Resident Pharmacy Permit Renewal, Form 4, 9/2023;[6/2023]
- (c) Application for Permit to Operate a Pharmacy in Kentucky, Form 1, 6/2023; and
- (d) Application for Resident Pharmacy Permit Renewal, Form 2, 6/2023.

(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/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: September 11, 2023

FILED WITH LRC: September 11, 2023 at 3:30 p.m.

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 fees associated with Board of Pharmacy licensure.

(b) The necessity of this administrative regulation: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is reasonable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows for the funding to support Board administration.

(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 increases fees for facilities permitted by the Board.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to ensure the Board is appropriately funded to cover personnel costs and comply with the administrative functions required for pharmacies, wholesale distributors, and manufacturers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. d. How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of permitted entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists will be affected minimally by this regulation amendment. Pharmacies, manufacturers and wholesale distributors will have increased fees of twenty-five dollars (25) for a new or a renewal license or permit. The application for change in location or change in ownership will have the same fee as the new and renewal applications because they require completion of a new application.

(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: During renewal, the identified entities will have an increased permitting fee to pay.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost of compliance for pharmacies, wholesale

distributors, and manufacturers will be \$150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will have the benefit of ensured compliance with federal law due to the state adoption of the federal licensing standards.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from 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: Yes, this regulation assesses an increase in fees. The increase in fees are necessary to properly fund the Board for the administrative activities related to licensing and inspection to ensure the Board is achieving its mission of public and patient safety.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, fees for pharmacies, manufacturers, and wholesale distributors.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacies, wholesale distributors, and manufacturers.

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 the only entity 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)(i); 315.035(4); 315.036(1); 315.110(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment will increase revenue by \$91,925.

(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 will increase revenue by \$91,925.

(c) How much will it cost to administer this program for the first year? The Board of Pharmacy does not anticipate any additional cost to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Board of Pharmacy does not anticipate any additional cost to administer this regulation for the first year.

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

Revenues (+/-): Amendment will provide an annual \$91,925 in revenue.

Expenditures (+/-): 0

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.

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

(c) How much will it cost the regulated entities for the first year? \$150 per permit.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): -\$150

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 Nursing

(Amended After Comments)

201 KAR 20:700. Medication aide training programs and credentialing of medication aides.

RELATES TO: KRS 194A.705(2), 216.510(1), 314.133

STATUTORY AUTHORITY: KRS 314.131, 314.133

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 and 314.133 requires the Kentucky Board of Nursing (KBN) to promulgate administrative regulations to establish requirements for the credentialing of medication aides, including educational requirements, standards for training programs including delegation of the administration of oral or topical medications and preloaded insulin injection, credentialing requirements, and fees for initial, renewal, and reinstatement of credentials, and any other necessary fees. This administrative regulation establishes requirements for KBN approval of medication aide training programs and requirements for the credentialing of medication aides.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Nursing.

(2) "Certified medication aide I" or "CMA I" means a person who:

(a) Has received specialized training under the supervision of a nurse; and

(b) Is permitted to administer oral or topical medications under the delegation of a nurse upon successful completion of a board approved examination.

(3) "Certified medication aide II" or "CMA II" means a person who:

(a) Meets the requirements of a CMA I; and

(b) Receives additional specialized training under the supervision of a nurse to administer only insulin via preloaded insulin pen upon successful completion of a board approved examination.

(4) "Didactic" means the component of a medication aide training program that includes lecture, verbal instruction, or other means of exchanging theoretical information between the instructor and students, including a classroom setting or distance learning technology.

(5) "Kentucky medication aide" means a state registered nurse aide (SRNA) who:

(a) Has successfully completed the medication aide examination administered by the Kentucky Community and Technical College System (KCTCS);

(b) Administers oral or topical medications under the delegation of a nurse to a resident of a long-term care facility; and

(c) Is accepted by the board as having a credential that shall be equivalent to a CMA I.

(6) "Long-term care facility" is defined by KRS 216.510(1).

(7) "Mentor" means a didactic instructor with teaching experience.

(8) "Training program" means formal specialized medication aide training provided by an individual, facility, third party vendor, college, or school.

Section 2. Medication Aide Training Program Approval. (1) A

KMA medication aide training and testing program administered by a college within KCTCS shall:

(a) Be deemed compliant with the requirements of this administrative regulation; and

(b) Not be required to submit an application to the board unless the KMA program provides training to individuals seeking a CMA II credential.

(2) Unless exempt under subsection (1) of this section, a training program shall not admit an individual until the program has been approved by the board.

(3) The following may request approval from the board to provide medication aide training for individuals seeking a CMA I or CMA II credential:

(a) A long-term care facility that has a license in good standing and offers medication aide training to:

1. Its own employees; or
2. Employees of a long-term care facility owned by the same company;

(b) A Kentucky university or college program; or

(c) Other proprietary education program located in Kentucky.

(4) In-state training programs.

(a) An in-state entity seeking board approval of its training program shall:

1. Submit a completed Application for Medication Aide Training Program via the portal at www.kbn.ky.gov accompanied by a fee of:

- a. \$200 for initial approval of a CMA I training program; or
- b. \$300 for initial approval of a CMA I and CMA II training program;

2. Prepare each candidate seeking a CMA I credential to pass:

a. The Medication Aide Competency Examination (MACE) administered by National Council of State Boards of Nursing; or

b. Other competency examination approved by the board; and

3. If the training program prepares a candidate seeking a CMA II credential, it shall prepare the candidate to pass a competency examination approved by the board.

(b) If the training program administers a proprietary competency examination to candidates seeking a CMA I or CMA II credential, the program shall submit a copy of the examination to the board for prior approval.

(5) Out-of-state training.

(a) An individual who completes a medication aide training program provided by an out-of-state training provider shall:

1. As a condition of obtaining the CMA I credential, pass the MACE or other competency examination approved by the board; or

2. As a condition of obtaining the CMA II credential:

a. Complete an out-of-state training program that meets the requirements of Section 6(7) and (8) of this administrative regulation; and

b. Pass a competency examination approved by the board.

(b) An out-of-state medication aide training program shall be exempt from the application requirements of subsection (4)1. of this section.

Section 3. Medication aide training program administration. (1) The training program shall appoint a program administrator who shall be responsible for the administrative oversight of the program; and

(2) Submit the following in writing to the board:

(a) Name of the program administrator;

(b) Date the program administrator will assume responsibility for administrative oversight of the program; and

(c) A copy of the program administrator's curriculum vitae;

(3) The training program shall notify the board in writing of a change of program administrators within thirty (30) days of the personnel change; and

(4) Develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each training program location; and

(5) Maintain a system of official records and reports essential to the operation of the training program according to the program's written policies that shall:

(a) Address how the program's records will be maintained in a

secure manner to protect from loss or unauthorized distribution or use;

(b) Ensure that all records shall be retained for at least five (5) years;

(c) Ensure that each trainee roster includes:

1. The nurse instructor's name and licensure information;

2. Each trainee's:

a. Name;

b. Date of birth;

c. Last four (4) digits of the trainee's Social Security number; and

d. Program activity and completion dates;

(d) Document how the program will conduct a periodic and systematic plan of evaluation; and

(e) Ensure that a list of successful graduates of the training program is maintained.

Section 4. Program administrator. The program administrator shall be:

(1) The facility administrator on record for each facility; or

(2) A registered nurse who has the following qualifications:

(a) An unencumbered Kentucky nursing license or multistate privilege to practice; or

(b) A temporary work permit as nurse in Kentucky.

Section 5. Instructors. (1) The number of instructors shall be adequate to implement the training program as determined by:

(a) Program outcomes;

(b) Instruction objectives; and

(c) The educational technology utilized.

(2) The program administrator shall be responsible for approving the instructors.

(3) Didactic instructors.

(a) The training program's didactic instructor shall have the following qualifications:

1. An unencumbered Kentucky nursing license or multistate privilege to practice; or

2. A temporary work permit as nurse in Kentucky.

(b) If the didactic instructor does not have prior teaching experience, the program administrator shall assign a mentor to the didactic instructor for the purpose of assisting with implementation of an educational development plan.

(4) Clinical instructors and preceptors.

(a) A clinical instructor shall hold a current:

1. Unencumbered Kentucky nursing license or multistate privilege to practice; or

2. Temporary work permit as nurse in Kentucky.

(b) A preceptor shall:

1. Meet the clinical instructor requirements in paragraph (a) of this subsection, or:

2. Hold a current medication aide certification; and

3. Have a minimum of six (6) months experience passing medications.

(5) Each training program shall maintain records in accordance with Section 3 of this administrative regulation to document that each clinical instructor has been oriented to the:

(a) Course;

(b) Program outcomes;

(c) Student learning objectives;

(d) Evaluation methods used by the instructors; and

(e) Role expectations.

Section 6. Standards for Training Programs and Medication Aide Certification. (1) A training program shall conduct an evaluation as required by Section 3(5)(d) of this administrative regulation to:

(a) Validate that identified program outcomes have been achieved; and

(b) Provide evidence of improvement based on an analysis of the results.

(2) As a condition of admission to a training program for a CMA I credential, the applicant shall:

(a) Be able to read, write, and speak English;

(b) Have basic math skills;

- (c) Have a high school diploma or equivalent; and
- (d) 1. Have at least six (6) months of continuous work experience as a State registered nurse aide (SRNA) in a nursing facility that is certified under Title XVIII or XIX of the Social Security Act; or
- 2. Direct care staff member of a:
 - a. Long-term care facility that is not certified under Title XVIII or XIX of the Social Security Act;
 - b. Facility operated by the Department of Juvenile Justice; or
 - c. Residential facility licensed by the Cabinet for Health and Family Services if authorized under the facility's scope of licensure.
- (3) A training program that prepares an individual for a CMA I credential shall:
 - (a) Include at least:
 - 1. Forty (40) clock hours of didactic course work;
 - 2. Twenty (20) clock hours of skills laboratory; and
 - 3. Forty (40) clock hours of direct patient contact with a clinical instructor;
 - (b) Ensure that the didactic course work and skills laboratory shall be completed in no shorter than a two (2) week course;
 - (c) Ensure that the candidate is precepted for a minimum of sixty (60) clock hours; and
 - (d) Maintain a log of clinical hours for each trainee in which the instructor and preceptor document completion of the clock hours required by subparagraphs 1. to 3. of this paragraph.
- (4)(a) Upon completion of CMA I training, a candidate shall complete the MACE or other board approved examination within sixty (60) days.
- (b) If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA I training, the candidate shall provide documentation of repeating the CMA I training to be eligible to retake the examination.
- (5) The curriculum for a CMA I training program shall include the following topics:
 - (a) Medication orders, documentation, storage, and disposal;
 - (b) Mathematics, weights and measures;
 - (c) Forms of medications;
 - (d) Medication basics, including terms, abbreviations, dosage, and actions;
 - (e) Safety and rights of medication administration;
 - (f) Preparation and actual medication administration;
 - (g) Prevention of medication errors;
 - (h) Causes and reporting of medication errors;
 - (i) Building of relationships;
 - (j) Reporting of symptoms or side effects;
 - (k) Reporting of changes from the resident's normal condition, status, or routine;
 - (l) Documentation of medication administration;
 - (m) Routes of administration;
 - (n) Factors affecting how the body uses medication;
 - (o) Classes of medications related to body systems and common actions;
 - (p) Location of resources and references;
 - (q) Rights of individuals;
 - (r) Specific legal and ethical issues;
 - (s) Knowledge of infection control related to medication administration;
 - (t) Roles of the supervising nurse;
 - (u) Role of the medication aide; and
 - (v) Responsibility of the medication aide when accepting delegated tasks.
- (6) As a condition of admission to a training program for a CMA II credential, the applicant shall have successfully completed the CMA I specialized training and passed the board approved CMA I examination.
- (7) A training program that prepares an individual for a CMA II credential shall include:
 - (a) A minimum of sixteen (16) clock hours of didactic course work in insulin administration via a prefilled insulin pen;
 - (b) A minimum of eight (8) clock hours of clinical training with continuous, direct, on-site supervision by a nurse to be completed within sixty (60) days of completion of the didactic course work;
 - (c) A minimum of twenty (20) documented insulin injections via

prefilled insulin pen that shall be:

- 1. Directly supervised by a nurse; and
 - 2. Completed within sixty (60) days of completion of the didactic course work; and
 - (d) A board approved competency examination.
 - 1. Upon completion of the CMA II training, a candidate shall complete a board approved examination within sixty (60) days.
 - 2. If the candidate does not pass the examination after two (2) attempts or if more than sixty (60) days have elapsed since completion of the CMA II training, the candidate shall provide documentation of repeating the CMA II training to be eligible to retake the examination.
 - (8) The curriculum for a CMA II training program shall include the following topics:
 - (a) Pathophysiology of diabetes;
 - (b) Diabetes disease management;
 - (c) Blood glucose testing and use of equipment;
 - (d) Understanding the meaning of glucose levels;
 - (e) Insulin administration procedure;
 - (f) Potential complications and adverse reactions; and
 - (g) Role and responsibility.
 - (9) Implementation of the curriculum.
 - (a) A training program shall be developed to include outcomes, planned instruction, learning activities, and methods of evaluation.
 - (b) The instruction methods and activities of both instructor and trainee shall be specified. The activities shall be congruent with stated objectives, and content shall reflect adult learning principles.
 - (c) A copy of the training program's curriculum shall be on file and available to the board upon request.
 - (d) Didactic instruction may be offered through distance learning technologies. The instruction offered through the use of distance learning technologies shall be comparable to that offered in an in-person program.
 - (10) Substantive changes to the training program's standards for medication training or certification shall be:
 - (a) Submitted to the board portal at www.kbn.ky.gov with a completed Application for Medication Aide Training Program within thirty (30) days of implementation; and
 - (b) Subject to a change of status fee of:
 - 1. \$200 for a CMA I training program; or
 - 2. \$300 for a CMA II training program.
 - (11) A training program shall respond to a written request from the board for documentation within thirty (30) days of the date of the board's request.
 - (12) The board shall have the authority to amend a program's standards for medication training or certification if it fails to comply with the requirements of the administrative regulation. Upon written notification, the training provider shall comply with the requirements within thirty (30) days.
 - (13) The board may deny, suspend, or revoke approval or the change of status of a medication aide training program, based upon the following:
 - (a) Failure to meet or maintain the requirements set forth in this administrative regulation; or
 - (b) Submitting false, misleading or deceptive statements, information or documentation to the board or its designees.
 - (14) If approval of the training program is denied, suspended, or revoked, the board shall do so in writing stating the reasons for the adverse action.
- Section 7. Program Completion Requirements and Recertification. (1) Each individual who successfully completes a board approved medication aide training program and passes the medication aide training and competency evaluation shall register via the board's nursing portal at www.kbn.ky.gov.
- (2) The training program shall submit to the board:
 - (a) The name of the certified individual;
 - (b) Title of training program, date of completion, and location;
 - (c) A program code number issued by the board; and
 - (d) Name and signature of the program administrator;
 - (3) A training program shall:
 - (a) Maintain a record of graduates for at least five (5) years; and
 - (b) Provide a copy of the training program's graduate records to

the board upon request.

(4) Recertification.

(a) The credential for a CMA I or CMA II shall expire one (1) year from the date of initial certification or recertification.

(b) To recertify as a CMA I or CMA II, the medication aide shall provide the board with:

1. Documentation of a yearly evaluation and validation of competency;

2. Proof of at least four (4) clock hours of medication-specific education;

3. A minimum of forty (40) hours worked prior to expiration of certification; and

4. A certification fee of twenty-five (25) dollars.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Medication Aide Training Program (CMA I)", 05/23; and

(b) "Application for Medication Aide Training Program (CMA I and II)", 05/23.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at: <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather; General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets educational requirements for medication aide training programs and the credentialing of medication aides.

(b) The necessity of this administrative regulation: This regulation is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By establishing educational requirements for medication aide training programs and the credentialing of medication aides.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing program educational requirements, approved by the Kentucky Board of Nursing (Board), for the approval of medication aide training programs and the certification of medication aides (CMA). There are two classes of CMAs are created: CMA I, and CMA 2. An individual with the CMA I certification will be trained in a KBN approved program to administer oral and topical medications in a long-term care facility; an individual with a CMA II will be trained in an approved program to also administer preloaded insulin injections.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation that is needed to conform with KRS 314.133.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation that sets the standards for medication aide I and II training programs and the credentialing of those medication aides.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation that sets the standards for medication aide I and II training programs and the credentialing of

those medication aides.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In addition to individuals, third party vendors, colleges and universities the may offer the training, there are approximately 100 assisted living communities, 290 nursing facilities, 16 independent care facilities, 105 personal care homes, and a provider categorized as an "Alzheimer's Nursing Home". Therefore, there are over 500 entities and facilities that will be able to offer the training under this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities that need to have individuals in their facilities who are trained as CMA I or CMA II to administer medications to their residents. The entities may institute their own training program as long as it has approved by the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be \$200 for review and approval of a CMA I program and \$300 for a CMA II program. There are no renewal fees. However identical fees if the entity subsequently substantially changes its CMA training program(s).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities with be in compliance with the Cabinet for Health and Family Services statutory and regulatory requirements regarding medication administration. The Board approved training program provides another avenue to employ trained staffing to assist with medical care of residents.

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

(a) Initially: There is no additional cost beyond the fee to cover staff time and resources.

(b) On a continuing basis: There is no additional cost, unless the program substantially changes its training program.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: New fees are mandated by KRS 314.133(4) and will be necessary to compensate the Board for staff time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It establishes fees pursuant to KRS 314.133(4).

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and 314.133.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Other than the initial application fee, there is no additional cost by the Board. However, the cost will vary by the entity and its individual needs should it implement a training program and is therefore indeterminate.

(c) How much will it cost the regulated entities for the first year? No additional cost by the Board. However, the cost will vary by the entity and its individual needs should it implement a training program and is therefore indeterminate.

(d) How much will it cost the regulated entities for subsequent years? The additional cost may be incurred by substantially altering the training programs, which would require subsequent review by the Board.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

RELATES TO: KRS 150.180

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems. This administrative regulation establishes the species of aquatic life that are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or release any aquatic species not native or established in Kentucky waters, except as established in Section[Sections] 2, 4, or 5 of this administrative regulation.

Section 2. Exceptions.

(1) A person may buy, sell, import, or possess any aquatic specimens for aquarium use[aquarium—species], except as[those] established in Sections 3 and 4[Section—3] of this administrative regulation, but shall not release the species into Kentucky waters.

(2) A person may buy, sell, import, or possess sterile, triploid grass carp (*Ctenopharyngodon idella*) pursuant to 301 KAR 1:171.

(3) A fertile, diploid grass carp may only be imported or possessed by a certified propagator for the exclusive purpose of producing triploid grass carp.

(4) Individuals of any aquatic species may be immediately released at the time of catch back into the water body from which they are caught.

(5) Tilapia (*Tilapia* spp. or *Oreochromis* spp.) may ~~only~~ be transported and sold live within Kentucky for aquarium use or to a:

(a) ~~Another~~ Licensed propagator;

(b) ~~A~~ Licensed live fish and bait dealer; or

(c) ~~A~~ Person, corporation, or other business entity that is selling fish for food in establishments licensed for resale by another state agency or for sale as wholesale food products.

(6) A person may buy, sell, import, or possess goldfish (*Carassius auratus*) for use as bait.

Section 3. The live aquatic organisms established in subsections (1) through (7) of this section shall not be imported, bought, sold, or possessed in aquaria:

(1) Subfamily Serrasalminae - piranha, piraya, pirae, or tiger characins;

(2) *Astyanax mexicanus* - Mexican banded tetra, Mexican minnow, or Mexican tetra;

(3) *Petromyzon marinus* - sea lamprey;

(4) Genus *Clarias* - walking catfish;

(5) Genus *Channa* - snakeheads of Asia and Africa;

(6) *Dreissena polymorpha* - zebra mussel; or

(7) *Neogobius melanostomus* - round goby.

Section 4. Invasive[Asian] carp.

(1) A person shall not buy, sell, possess, import, transport, or release the live invasive[Asian] carp species established in paragraphs (a) through (d) of this subsection, except as established in Sections 2(2), (3), and (4) of this administrative regulation:

(a) *Hypophthalmichthys molitrix* - silver carp;

(b) *Hypophthalmichthys nobilis* - bighead carp;

(c) *Mylopharyngodon piceus* - black carp; or

(d) *Ctenopharyngodon idella* - grass carp[~~—except as established in Section 2(2) and (3) of this administrative regulation~~].

(2) A licensed commercial fisherman or any person possessing a sport fishing license may possess, sell, and transport the species of invasive[Asian] carp established in Section 4(1) of this administrative regulation if the invasive[Asian] carp are:

(a) Not being transported in water;

(b) Dead or dying[Moribund]; and

(c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

RICH STORM, Commissioner

APPROVED BY AGENCY: September 14, 2023

FILED WITH LRC: September 15, 2023 at 9:00 a.m.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect Kentucky's fish populations from the damaging effects of invasive fish species.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2)

authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will carry out the purposes of the statutes by restricting possession, transportation, sale, and release of species potentially damaging to native ecosystems.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow individuals of any aquatic species, to be immediately released back into the water body from which they are caught, restrict transportation and sale of live tilapia species for food consumption only, add "possess" to the prohibited actions pertaining to live invasive carp species, allow sport fishing anglers to possess, transport, and sell invasive carp if they are not in water, are dead or dying (replaces the word "moribund"), and are being transported to a fish processing facility. Finally, this amendment clarifies that goldfish may be used as bait.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies that anglers can immediately release invasive carp which they catch back into the water body they were caught. Previously, the regulation stated all "release" was illegal. Live tilapia are a viable food product, but they should not be stocked in Kentucky's waters. This amendment clarifies that live tilapia can only be transported and sold based on specific guidelines related to food sales. This amendment also cleans up language to specify that live invasive carp cannot be "possessed", along with the other prohibited activities already in the regulation. Along with this, the amendment does allow for invasive carp to be possessed by licensed anglers if the fish are out of water, are dead or dying (replaces the word "moribund"), and going to a fish processing facility. Finally, this amendment clarifies that goldfish can be used as bait when fishing.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect anglers wishing to sell invasive carp or use goldfish as bait. In addition, anglers that catch an invasive species such as invasive carp, will not be required to keep it and can release it immediately back into the water. Both commercial and recreational anglers will be prohibited from possessing live invasive carp. Finally, those who wish to propagate, buy, sell, and transport live tilapia, will be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities dealing with invasive carp and other invasive aquatic species, tilapia, or goldfish must follow the new regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will benefit anglers by keeping damaging aquatic invasive species out of Kentucky's waters.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

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

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

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no anticipated 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? There will be no anticipated cost savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs for the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will have no major economic impact as defined above.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)**

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order.

(1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits for the condemned person during each shift daily. The contacts and observations from these nurse visits shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;

2. Document his or her observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person;

3. Review the department medical records for the condemned person for:

a. A diagnosis of an intellectual disability as:

(i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM); ~~or~~

(ii) Defined by the American Association on Intellectual and Developmental Disabilities (AAIDD); or

(iii) Indicated by other similar prevailing medical standards and clinical guidelines; or

b. An IQ test score of seventy-five (75) or lower after adjustment for the applicable standard error of measurement; and

4. If any record is located that meets the criteria in subparagraph 3 of this paragraph, the psychologist shall notify the warden.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.

(b) A psychiatric interview and evaluation to assess for signs of insanity shall be:

1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus;

2. Placed in the condemned person's medical record; and

3. Sent to the warden.

(3) The designated medical professional shall:

(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and

(b) Document his or her observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons.

(1) If the condemned person is female, a pregnancy test shall be administered.

(2) A pregnancy test shall be administered at least seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven (7) days prior to the scheduled date of execution.

(3) If the execution order is received less than seven (7) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable.

(4) If a pregnancy test is positive, then the department shall:

(a) Give written notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues.

(1) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he or she may be insane as **demonstrated by an inability to rationally understand why the state wants to execute him or her** ~~defined in KRS 431.213(2)~~, the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine:

(a) The source of the information; and

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order a psychiatric evaluation if he determines one is needed.

(4) If a department psychiatric evaluation determines that the condemned person may be insane as **demonstrated by an inability to rationally understand why the state wants to execute him or her** ~~defined in KRS 431.213(2)~~, the department shall:

(a) Give written notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. If the warden is notified by the psychologist described in Section 1(1)(c) of this administrative regulation concerning ~~[a diagnosis of]~~ an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person after adjustment for the applicable standard error of measurement, the:

(1) Warden shall notify the Commissioner; ~~and~~

(2) Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the record located ~~[The notice shall state that a court order is required for the execution to be suspended.]; and~~

(3) Commissioner shall suspend the execution pursuant to KRS 532.140 to allow procedures consistent with KRS 532.135.

Section 5. Execution Substances. [~~The warden shall:~~]

(1) ~~The warden shall:~~

~~(a) Notify medical staff and the ambulance service of the substances that may be used for the execution so that planning can be done in case of suspension of the execution after the drugs have been administered; and~~

~~(b)(2) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances and notify the warden if a known potential adverse reaction is identified.~~

~~(2) If the warden is notified that a known potential adverse reaction has been identified, the warden shall notify the commissioner and the ambulance service.~~

~~(3) If the commissioner is notified that a known potential adverse reaction has been identified, the commissioner shall notify the Attorney General or designee, the condemned person's counsel, the condemned person, and the Governor's Office in writing of the potential adverse reaction.~~

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 12, 2023

FILED WITH LRC: September 14, 2023 at 10:00 a.m.

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution of a condemned inmate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the Department of Corrections execution protocol compliance with constitutional and statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Department of Corrections execution protocol to be compliant with statutory and constitutional requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will require a suspension of an execution in the event the Department of Corrections discovers a diagnosis or specific signs of an intellectual disability during the pre-execution medical actions.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary because of constitutional requirements related to the execution of condemned inmates developed by recent Supreme Court of the United States and Supreme Court of Kentucky case law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation conforms with the authorizing statutes because KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions, and the Department of Corrections is a division of the Justice and Public Safety Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Justice and Public

Safety Cabinet, Department of Corrections effectively administer the death penalty as established by KRS 431.220 and ensures that it is administered in a way that complies with constitutional requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect condemned inmates, their attorneys, judges with sentences of death in their circuits, and employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Corrections will be responsible for ensuring pre-execution medical actions are completed and the Warden of the Kentucky State Penitentiary is notified in the event a record of a diagnosis or specific signs of a serious intellectual disability is discovered during the pre-execution medical actions. The Commissioner of the Department of Corrections will be responsible for suspending the execution upon notification of the discovery of a diagnosis or specific signs of an intellectual disability. The condemned person or the condemned person's counsel as well as the Governor's Office, the Attorney General's Office, and judges will be responsible for taking the appropriate steps to litigate whether such an intellectual disability exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation does not include any requirements of the entities affected that would exact a cost beyond the time required to be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the parties named in question (3) will benefit by ensuring that no seriously intellectually disabled individual will be executed.

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

(a) Initially: The Department's medical services are under contract at a rate of \$17.36 per inmate per day. Most costs involved with execution result from statutes.

(b) On a continuing basis: Medical costs typically rise between 5% and 7% annually, but this is not a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Appropriations of General Funds to the Department of Corrections

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation amendment will not require an increase in fees or funding for implementation. An increase in funding may be necessary for annual increases in medical costs and staffing costs, but no new costs are expected to result from the implementation of the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not appropriate in this instance because the regulation and its impact will not disproportionately impact any particular class regulated entity.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Members of the judicial branch including courts and judges with sentences of death

in their circuits, as well as members of the executive branch including employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions, and the Department of Corrections is a division of the Justice and Public Safety Cabinet. The death penalty is established by KRS 431.220.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department's medical cost per inmate per day is currently \$17.36. This administrative regulation should not cause any additional medical costs.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the contracted rate for medical services, which typically increases by 5% to 7% annually. The Department does not expect to incur any additional costs other than the current medical contract costs already incurred.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The current medical contract rate of \$17.36 per inmate per day are anticipated.

(d) How much will it cost the regulated entities for subsequent years? Medical costs typically rise between 5% and 7% annually, but this is not a result of the amendment to this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

505 KAR 1:010. Definitions.

RELATES TO: KRS 15A.065, 15A.067, 15A.305, 200.080-200.120, Chapters 600-645, 500 KAR 13:020[15A.300]

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.305, 158.281, 200.115, 197.045, 605.035, 605.150, 635.095, 635.100(7), 640.120, 645.250[15A.300]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, ~~15A.210,~~ 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.[15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant program.] This administrative regulation defines terms used in[sets forth definitions that apply to] 505 KAR Chapter 1.

Section 1. Definitions.

(1) "Absent without leave" or "AWOL" means a juvenile who leaves an approved placement without advanced approval from the supervising authority or is absent from an approved community setting for more than three (3) hours without notification[is absent without permission from an alternative to detention placement or a DJJ probated or committed public offender or a youthful offender who is absent without permission while on conditions of probation, conditions awaiting placement, or who violates the terms or conditions of supervised placement].

(2) "ADO" means Administrative Duty Officer.

(3) "Administrative transfer request" or "ATR" means a request for consideration of change in placement for any juvenile in out-of-home placement.

(4) "Aftercare" means a continuum of planned supervision, schedules, activities, and services coordinated for or provided to a juvenile who has been released from a department operated or contracted out of home treatment placement[group home or private child care provider] and who is being integrated into a local community setting.

(5) "Aggressive behavior" means behavior or acting out that could lead to the infliction of harm or injury to self, others, or property.

(6) "Alternative to Secure Detention Program" or "ATD" means any resource that provides a less restrictive environment than secure detention, such as emergency shelter care, a court resource home, a day reporting center, ~~for~~ home detention, or foster care.

(7) "Anniversary date" means the date sentenced, by which eligibility for meritorious good time shall be reviewed.

(8) "Career and technical education" means education or training in skilled trades, applied sciences, modern technologies, and career preparation offered or approved by the department.

(9) "Caregiver" means a guardian or other person exercising custodial control or supervision of a juvenile.

(10) "Case management" means a collaborative process to coordinate services and supervision for the family unit. Components of case management include assessment, case planning, resource linkage, monitoring, documentation, advocacy, promoting family strengths, and engaging the family.

(11) "Case plan" means a written document that builds a plan for supervision and services that targets the risk and need factors identified in the juvenile's Criminogenic Needs Questionnaire and Risk and Criminogenic Needs Assessment and involves the juvenile, family, service providers, and natural supports. The plan shall include the goals to be pursued, the specific roles of the participants in carrying out the plan, and the specific timetable for completion of the plan.

(12) "Cavity search" means a manual or instrument inspection of a person's anal, vaginal or other body cavity by trained medical personnel. **An instrument inspection does not include whole**

body imaging for security.

(13) "Chain of custody" means documented accountability for the custody of evidence from the moment it reaches the staff's custody until the moment it is presented in court, transferred, or destroyed.

(14) "Chemical agent" means non-lethal gases including Chlorobenzalmalononitrile (CS) gas and Oleoresin Capsicum (OC) gas, spray, and pepper ball delivery methods; and hexachloroethane (HC) smoke and similar chemicals used to control individuals or crowds. This does not include chloroacetophenone or hydrogen cyanide (CN) (chemical mace), which is not authorized for use within DJJ or for training.

(15) "Child Find" means a component of the Individuals with Disabilities Education Improvement Act 2004 that requires states and local education agencies to identify, locate, and evaluate all children with disabilities residing in the state, regardless of the severity of their disability, who are in need of special education and related services as described by 34 C.F.R. §300.111.

(16) "Chronic program disruption" means a pattern of behavior that threatens the safety and security of the facility, self, or others where less restrictive responses have failed to modify the behavior.

(17) "Classification" means a process to determine the risks, needs, and requirements of a juvenile.

(18) "Classification placement" means the out-of-home placement of a committed juvenile as determined by the department's Classification Branch Placement Services.

(19) "Cognitive behavioral therapy" means using treatment techniques emphasizing the role of thoughts, feelings, and behaviors in a person's functioning and well-being, helping a juvenile recognize their problematic thoughts, feelings, and behaviors and learn alternative ways to cope and prevent relapse.

(20) "Commissioner" means the commissioner of the department [of Juvenile Justice].

(21) "Commissioner's warrant" means a document issued by the department directing that a juvenile be taken into custody.

(22) "Commitment" means an order by a court ordering a juvenile to the care, custody, and treatment of an agency or private or state institution maintained for such purpose.

(23)[(2)] "Community Juvenile Justice Partnership Grant Program" means the grant program utilizing state general funds for a local community to support the development of a prevention program.

(24)[(3)] "Comprehensive plan" means the plan developed and adopted by the council, and approved by the commissioner, that directs the development and funding of programs and initiatives of the council for a designated period of time.

(25) "Conductive energy device" means a device that functions by applying electrical impulses to the receiver, causing involuntary muscle contractions and temporary immobilization.

(26) "Consequence" means suspension of privileges or behavioral penalty issued due to a negative behavior that is being displayed or an infraction of the facility's rules.

(27) "Contraband" is defined by KRS 520.010(1) and includes tobacco, lighters, matches, pins, needles, sewing equipment, aerosol cans, toxic cosmetics (such as nail polish remover), modeling glue, cleaning fluids, paints, razors, tools, ropes, chains, extremely toxic house plants, broken articles, vaping articles or supplies, inappropriate photos or depictions (such as nudity, sexual content, or gang signs or symbols), drug paraphernalia as defined by KRS 218A.500, and any other item used to subvert security measures, assist in an escape event, or items identified in writing by the facility or program to the juvenile.

(28)[(4)] "Council" means the local juvenile delinquency prevention council whose members are appointed by the Commissioner of the Department of Juvenile Justice.

(29) "Criminogenic Needs Questionnaire" or "Needs-Q" means a tool that identifies dynamic or changeable risk factors, called criminogenic needs, that contribute to the juvenile's likelihood of reoffending which are to be utilized in case planning allowing for the targeting of treatment interventions for the juvenile and family in order to reduce recidivism.

(30) "Critical incident" means a sudden, unexpected occurrence that puts a person's safety at risk. This incident falls outside of the

range of a day-to-day operations. If it goes unaddressed, a critical incident may lead to injury or death.

(31) "Dangerous contraband" is defined by KRS 520.010(3) and means contraband that is capable of endangering the safety or security of a facility or persons therein, including saws, files, and similar metal cutting instruments, any controlled substance, any quantity of an alcoholic beverage, any quantity of marijuana, THC delta-8, or THC delta-9, dangerous instruments, and deadly weapons as defined by KRS 500.080. The definition shall not include the parts of the human body portion of the definition of dangerous instrument.

(32) "Dangerous instrument" is defined by KRS 500.080(3).

(33) "Day release" means both escorted and unescorted leave into the community of less than twenty-four (24) hours duration from placement.

(34) "Day treatment" means a community-based treatment program for a juvenile juvenile **in need of intensive therapeutic supports outside of a residential or hospital setting and offers a range of services including education; clinical assessment; rehabilitation activities; individual, family, and group therapy; and other interventions[whose behavior precludes participation in a regular school].**

(35) "Deadly weapon" is defined by KRS 500.080(4).

(36)[(5)] "Department" or "DJJ" means the Department of Juvenile Justice.

(37) "DCBS" means Department of Community Based Services.

(38) "Detention facility" is defined by KRS 520.010(4).

(39) "Detention Alternative Coordinator" or "DAC" means a person employed by the Department of Juvenile Justice that is responsible for the development of alternatives to secure detention programs, screening of juveniles to determine who is appropriate for non-secure detention, and oversight of the juveniles placed in these programs.

(40) "Detention risk assessment instrument" means the scoring instrument used by the Department of Juvenile Justice to determine whether a juvenile should be placed in secure, non-secure, or home detention care.

(41) "Discrimination" means an abridgement of rights based upon a person's race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity, genetic information, or veteran status.

(42) "Discharge planning conference" means a meeting of the treatment team to finalize the aftercare plan and facilitate the transition of the juvenile to a lower level placement.

(43) "Discipline" means a process to assist the juvenile in learning socially acceptable behaviors **and rule compliance** through the use of natural and logical consequences.

(44) "Disciplinary review" means a non-judicial administrative procedure to determine if grounds exist to support discipline for a major rule violation.

(45) "Disciplinary Review Committee" means staff designated to conduct a disciplinary review.

(46) "Drug screen" means a preliminary screening of a urine specimen for the presence of selected categories of drugs.

(47) "Drug test" means processing a urine specimen for confirmation of the presence of drugs.

(48) "Educational good time" means a sentence credit for a youthful offender for an educational accomplishment pursuant to KRS 197.045(1)(a)(2) and (3) and approved pursuant to 505 KAR 1:260.

(49) "Electronic monitoring" means a supervision tool that provides electronic information about the juvenile's presence at, or absence from, his or her residence or other location.

(50) "Emergency ATR" or "E-ATR" means an electronic request for transfer that is executed through supervisory channels, without committee review, and subsequently supported with written documentation.

(51) "Emergency furlough" means a furlough that may be granted as a result of a crisis or urgent situation.

(52) "Escape" is defined by KRS 520.010(5).

(53) "Escorted day leave" means the authorized absence of a juvenile from the detention facility into the community for a period of less than 24-hours under direct escort and supervision of the

detention center staff.

(54) "Facility" means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals as established in 28 C.F.R. § 115.5.

(55) "Facility restriction" means restricting a juvenile to the confines of the facility or program grounds.

(56) "Family Accountability, Intervention, and Response Team" or "FAIR Team" means the team described in KRS 605.035(1).

(57) "Family engagement" means working with the juvenile's family or caregiver as a partner with the Department of Juvenile Justice in the juvenile's treatment throughout the continuum of care.

(58) "Fixed restraint" means the restraining of an individual to a bed, restraint chair, or any stationary object and is commonly referred to as "four/five-point restraint".

(59) "Furlough" means an approved, unescorted leave of absence granted to a juvenile extending beyond a twenty-four (24) hour period from placement.

(60) "FRA" means Facilities Regional Administrator.

(61) "Grievance" means a written statement in which a complaint or dissatisfaction is documented and filed in the department grievance process.

(62) "Grievance officer" means a facility staff person trained by the department Ombudsman and assigned to process juvenile grievances.

(63) "Group home" or "GH" means a residential program emphasizing family-style living in a homelike environment that generally houses eight (8) to ten (10) juveniles.

(64) "Home detention" means ordered supervision of a juvenile in his or her own home with or without electronic monitoring.

(65) "Home evaluation" means an evaluation and subsequent report of findings to determine if supervision in a proposed residence is in the best interest of the juvenile and the community.

(66) "Home state" means the state where the juvenile's legal guardian or custodial agency is located.

(67) "Human trafficking" is defined by KRS 529.010(7).

(68) "Immediate family" means:

(a) Spouse;

(b) Children or stepchildren;

(c) Parents or stepparents;

(d) Grandparents;

(e) Siblings or stepsiblings and their spouses; and

(f) Aunts and uncles and their spouses.

(69) "Incident" means an unusual event or occurrence including:

(a) Use of isolation;

(b) AWOL or escape;

(c) Assault by juvenile on juvenile;

(d) Assault by juvenile on staff;

(e) Major property destruction;

(f) Possession of contraband;

(g) Death of a resident;

(h) Major injury;

(i) Suicide attempt;

(j) Use of restraint;

(k) Taking of hostages;

(l) Medication error;

(m) Rioting or attempting to incite a riot;

(n) Self-harming behavior; or

(o) Other similarly serious occurrence that a DJJ supervisor determines is an incident.

(70) "Individual client record" or "ICR" means the electronic case file, sometimes referred to as "juvenile offender records index" or "JORI", and hard case file of an individual juvenile by which information and documentation is maintained.

(71) "Individual Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(72) "Individual Learning Plan" or "ILP" means a document usually developed online for a student in middle and high school that focuses on career exploration, assessment of skills and interests, reflection on work related experiences, and the creation of an education plan that includes personal goals and exploration of college and post-secondary opportunities.

(73) "Individual Learning Plan Addendum" or "ILPA" means an educational action plan recorded in Infinite Campus that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program.

(74) "Individual Program Plan" or "IPP" means a plan for a juvenile who struggles to participate in the normal routine of the facility, including a juvenile who is assaultive, has chronic program disruption, or who presents a danger to themselves.

(75) "Individual Treatment Plan" or "ITP" means a written document that takes into consideration the severity of the current offense, the risk and need factors identified in the juvenile's needs assessment, and any additional assessments, and identifies the treatment goals to be pursued, specifies the roles of the participants in carrying out the plan, and specifies a timetable for completion of the plan.

(76) "Intensive room supervision" means constant staff supervision of a juvenile placed in a room with the door open for a period of time.

(77) "Internal Investigations Branch" or "IIB" means the office within the Justice and Public Safety Cabinet that investigates complaints of abuse or a special incident.

(78) "Isolation" means the removal of a juvenile from the general population and placement in a room with the door closed due to a threat to the safety or security of the facility, staff, or juvenile.

(79) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 600.020 operated by and under the supervision of any political subdivision.

(80) "JSW" means Juvenile Service Worker.

(81) "Juvenile" means:

(a) Any person probated, committed, or under the supervision of the Department of Juvenile Justice who is subject to the jurisdiction of the juvenile court;

(b) Any youthful offender in the custody of the Department of Juvenile Justice prior to final sentencing; and

(c) Any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail as established in 28 C.F.R. § 115.5.

(82) "Juvenile holding facility" means a physically secure setting which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified staff to provide twenty-four (24) hour per day supervision.

(83)[(6)] "Juvenile Justice Advisory Board" means the board created by KRS 15A.065.

(84) "Juvenile sexual offender" is defined by KRS 635.505(2) and includes a juvenile adjudicated for an offense involving sex or of a sexual nature as determined by the sending state or who may be required to register as a sex offender in the sending or receiving state.

(85) "Lateral transfer" means the transfer of a juvenile from one placement to another within the same placement level.

(86) "Least restrictive alternative" is defined in KRS 600.020(38).

(87) "Legal guardian" means a parent or other person who is legally responsible for the care and management of the juvenile.

(88) "Leisure time" means ~~[structured]~~ free time in which juveniles are given the opportunity to engage in constructive activities such as drawing, writing, reading, or listening to music.

(89) "Level 4 facility" means a maximum security youth development center as set forth in KRS 15A.0652.

(90) "Level of Placement Continuum" means the movement of a juvenile within placement levels.

(91) "Level system" means a ~~[three (3)]~~ tiered system to provide a structured system for measuring progression toward treatment goals.

(92)[(7)] "Local community" means the area represented by the council.

(93) "Maximum secure facility" means a juvenile residential facility that is physically secure.

(94) "Mechanical restraint" means a device, including handcuffs, ~~anklet[, and]~~ waist chains, **and black boxes** used by department staff to restrict the free movement of a juvenile.

(95) "Meritorious good time" means a sentence credit that may be awarded to a youthful offender pursuant to KRS 197.045(1)(b)(2) for good behavior, performing duties of outstanding importance, or exceptional service in connection with facility operations and programs and pursuant to KRS 197.045(1)(b)(3) in emergencies.

(96) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including ~~[, but not limited to,]~~ family relationships; friendships reflecting the diversity of the neighborhood and the community; association with fellow students or employees in regular classrooms and work places; and associations developed through participation in clubs, organizations, and other civic activities.

(97) "Needs assessment" means identifying dynamic or changeable risk factors, called criminogenic needs, that contribute to the juvenile's likelihood of reoffending which are to be utilized in case planning allowing for the targeting of treatment interventions for the juvenile and family or caregiver in order to reduce recidivism.

(98) "Office of Career and Technical Education" or "OCTE" means an office within the Kentucky Department of Education that addresses career and technical education as a component of the high school curriculum.

(99) "One-to-one supervision" means an individual staff member is assigned to directly supervise no more than one (1) juvenile with the staff staying within very close proximity to ensure constant supervision and immediate intervention if needed for safety reasons.

(100) "Open entry-open exit" means allowing a juvenile to enter school and exit school as the student enters and exits DJJ custody rather than during normal school semester or quarter schedules.

(101) "Orientation Treatment Plan" or "OTP" means a written document outlining short term objectives and expectations and any problems that require immediate attention and will be in effect until an Individual Treatment Plan is written.

(102) "Out-of-home placement" is defined by KRS 600.020(45).

(103) "Pat-down search" means a running of the hands over the clothed body of a juvenile by an employee to determine if the individual possesses contraband.

(104) "Physical restraint" means a set of techniques used to physically manage ~~a~~~~an out of control~~ juvenile exhibiting aggressive behavior.

(105) "Physically secure facility" is defined by KRS 600.020(50).

(106) ~~[(8)]~~ "Plan year" means the period beginning July 1 of the fiscal year for which the commissioner approves a council's comprehensive plan, and ending on June 30 of the fiscal year.

(107) "Public offender" means a juvenile who is accused of an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense.

(108) "Program days" means scheduled days for a student's attendance at a day treatment program.

(109) "Reasonable suspicion" means a less stringent standard than probable cause requiring the authority acting to be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant a belief that an individual is in possession of contraband.

(110) ~~[(9)]~~ "Regional director" means the Department of Juvenile Justice Regional Director for the area in which the council is based.

(111) "Risk assessment" or "Risk and criminogenic needs Assessment" or "RCNA" means a standardized method of data collection that estimates the likelihood that continued delinquent behaviors will occur without intervention and guides intervention planning.

(112) "Room confinement" means a juvenile at a Level 4 facility is placed in a room in a general population unit with the door closed for a period of time not to exceed four (4) hours for the purposes of assisting the juvenile with regaining control of their behavior while avoiding a placement in isolation.

(113) "Room restriction" means temporary removal of a juvenile from the general population to a specified location for behavior management with the door open.

(114) "Runaway" means any child under the juvenile

jurisdictional age limit established by their home state who has run away from their residence without consent of the parent, legal guardian, person, or custodial agency entitled to their legal custody.

(115) "Section 504 plan" or "504 plan" means a written statement developed for a student with a disability that includes the provision of regular or special education and related aids and services designed to meet individual educational needs in accordance with the federal regulations issued under 34 C.F.R. sec. 104.33.

(116) "Secure facility" means a facility which is approved for the holding of juveniles and is one which is either staff-secured or locked and which prohibits a juvenile in custody from leaving.

(117) "Secure juvenile detention facility" is defined by KRS 15A.200(4).

(118) "Security staff" means employees primarily responsible for the supervision and control of juveniles in housing units, recreational areas, dining areas, and other program areas of the facility as established in 28 C.F.R. § 115.5.

(119) "Security threat group" or "STG" means a formal or informal ongoing group of juveniles varying in organization and composition that have:

(a) Common characteristics, interests, and goals distinguishing them from other juveniles;

(b) A common name or common identifying signs, colors, or symbols;

(c) Individually or collectively engage in or have engaged in a pattern of continued criminal activity or departmental rule violations; and

(d) The potential to act in concert to interrupt the safe, secure, and orderly operations of an institution or any other department facility or pose a threat or potential threat to public safety.

(120) "Sex Offender Registry" means a registration system for adults or youthful offenders who have committed a sex crime and have been tried and sentenced as adults.

(121) "Sexual abuse" means the behavior described in 28 C.F.R. § 115.6.

(122) "Sexual offender" is defined by KRS 17.500(9).

(123) "Shift log" means a written record that documents routine information, emergency situations, and unusual incidents.

(124) "Special incident" is defined by 500 KAR 13:020.

(125) "Special Management Plan" means a specific therapeutic intervention for an identified juvenile to work through difficult treatment issues and develop personal behavior management skills without disrupting the treatment culture of the overall program.

~~(126) ["Specialized programming" means DJJ-operated or, if reasonably available, private child care programs that provide specialized treatment services to identified populations served by the department, which may include sexual offender treatment programs or programs for a juvenile with an identified mental health need such as a juvenile with a severe emotional disability.]~~

~~(127)]~~ "Staff secure" is defined by KRS 600.020(64).

~~(127) [(128)]~~ "Staff-secure shelter" means ~~short-term~~, 24-hour custodial care for a juvenile in a ~~[non-department]~~ staff secure setting.

~~(128) [(129)]~~ "Status offender" means a juvenile who is accused of committing acts, which if committed by an adult, would not be a crime.

~~(a) Status offenses shall include:~~

- ~~1. Beyond the control of school or beyond the control of parents;~~
- ~~2. Habitual runaway;~~
- ~~3. Habitual truant; and~~
- ~~4. Alcohol offenses as provided in KRS 244.085.~~

~~(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew.~~

~~(129) [(130)]~~ "Step-down" means transition of a juvenile from a higher placement level to a lower placement level.

~~(130) [(131)]~~ "Step-up" means transition of a juvenile from a lower placement level to a higher placement level.

~~(131) [(132)]~~ "Strip search" means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

(132)[(133)] “Time out” means the temporary removal of a juvenile from general programming in order for the juvenile to be given a chance to regain control of their behavior.

(133)[(134)] “Track” means out-of-home timeframes dependent upon type of offense per KRS 15A.0652.

(134)[(135)] “Treatment team” means department staff and professionals who work collaboratively to assist and aid the juvenile in achieving goals.

(135)[(136)] “Unescorted day leave” means the authorized absence from the detention center into the community for a period of less than 24-hours without escort or supervision, or under escort and supervision of anyone other than the detention center staff, and may be referred to as furlough by the court system.

(136)[(137)] “Unfounded” means the charges are false or the employee was not involved in the incident.

(137)[(138)] “Unit restriction” means restricting a juvenile to a specific program area.

(139) “Vocational education” means soft-skills courses, including resume building, interviewing, and working relations, which contribute to the development of a successful employee.

(138)[(140)] “Work detail” means daily work and chore assignments related to housekeeping, maintenance of the facility or its grounds, or personal hygiene needs.

(139)[(141)] “Work experience program” means an organized work training program offered as a component of the educational or career and technical programming with an emphasis on instruction and evaluation rather than task accomplishment.

(140)[(142)] “Work release” means approved day leave for a juvenile to participate in employment.

(141)[(143)] “YDC” means youth development center.

(142)[(144)] “Youth” means a person who is under the custody, control, or supervision of the Department of Juvenile Justice, as a result of a court order or interstate supervision.

(143)[(145)] “Youth Activity Fund Account” means the financial account holding money owned by the current juvenile population through individual juvenile funds earned through allowance and work experience and money held for the benefit of the juvenile population obtained through work projects, sales of articles produced by juveniles, and private donations.

(144)[(146)] “Youth Activity Funds” means a sub-ledger of the youth activity fund account that is comprised of donations, profit from work projects, and vending machine commissions and shall solely be used for benefit of the juveniles including group social and recreational pursuits of the juveniles.

(145)[(147)] “Youth Counselor” means the department staff who is responsible for coordinating treatment within a day treatment, group home, youth development center, or detention facility.

(146)[(148)] “Youthful offender” is defined by KRS 600.020(72).

VICKI REED, Commissioner

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 10:00 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 505 KAR Chapter 1.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to

promulgate administrative regulations for the proper administration of the cabinet and its programs.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment adds numerous definitions used in the chapter to an administrative regulation rather than having them incorporated by reference in policies.

(b) The necessity of the amendment to this administrative regulation: The definitions need to be in an administrative regulation since additional administrative regulations using the terms are being promulgated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs and definitions are needed for the chapter.

(d) How the amendment will assist in the effective administration of the statutes: Definitions are needed for the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 863 DJJ employees, 1335 juveniles and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and juveniles will have to be aware of the definitions involved in the administrative regulations in the chapter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(Amended After Comments)

505 KAR 1:100. [Department of Juvenile Justice Policies and Procedures: admissions]Admissions.

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

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, [15A.240,--]15A.305[(6)], [200.145,]605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, [15A.240,]15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes admission, classification, and notice requirements for juveniles in the custody of the department in juvenile detention centers, youth development centers, and group homes[incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program].

Section 1. Admission to a Juvenile Detention Center. (1) The agency or individual presenting a juvenile at a secure detention facility shall provide documentation authorizing detention or the juvenile shall not be accepted for admission.

(2) A juvenile with a serious physical injury or medical condition requiring skilled nursing care or who reports or appears to be under the influence of a drug or alcohol shall be denied admission until seen by a medical professional and determined to be medically stable.

(3) A juvenile may be housed to best accommodate their medical needs, if possible.

(4) Juveniles shall be housed so as to reduce known risk factors, including proximity and interaction with co-defendants and others with whom they have emergency protective or other no-contact orders, security threat group assessments, suicide risk, and assaultive and disruptive behavior, and meet identified developmental and individual needs.

(5) Until a plan outlined in Section 6 of Senate Bill 162 enacted during the 2023 Regular Session is operational, DJJ shall continue to operate under the current emergency structure, and shall operate at least one female only detention facility and for male youth, DJJ shall[DJJ may] operate both high-security detention facilities and low-security detention facilities.

(a) The high-security detention centers shall house juveniles fourteen (14) years of age or older that are accused of having committed a Class C felony. The offense allegations for juveniles charged with a Class D felony may be reviewed for concerns of violence and placement in a high-security detention center[or an unusually violent Class D felony].

(b) The low-security detention centers shall house juveniles thirteen (13) years of age or younger that are accused of having committed a Class C felony or above and all juveniles that are accused of having committed a Class D felony or below, except as provided in paragraph (a) of this subsection.

(6) DJJ may determine and designate the detention center in which a juvenile will be detained based on multiple factors such as safety, security, staffing needs, and the fluctuating number of juveniles and capacities at different locations, and known risk factors, including proximity and interaction with co-defendants and others with whom they have emergency protective or other no-contact orders, security threat group assessments, suicide risk, and assaultive and disruptive behavior, and meet identified developmental and individual needs.

(7) DJJ may transfer a juvenile initially placed at a low-security detention center to a high-security detention center if the juvenile has:

(a) Injured or endangered the life or health of self, another juvenile, or staff at the detention center;

- (b) Caused disruption in a detention center;
- (c) Smuggled contraband into a detention center;
- (d) Escaped from a detention center;
- (e) Established a pattern of disruptive behavior not conducive to the operations and procedures of a low-security detention center;
- (f) A medical issue; or
- (g) Another factor that causes an operational or security issue that can be addressed by the transfer.
- (8) DJJ may transfer a juvenile initially placed at a high-security detention center to a low-security detention center if the juvenile has:
 - (a) A special vulnerability, for example, small stature or low weight compared to other juveniles in the facility;
 - (b) A medical issue; or
 - (c) Another factor that causes an operational or security issue that can be addressed by the transfer.

Section 2. Placement of Committed Juveniles. (1) Juveniles committed or sentenced to the Department of Juvenile Justice shall be assessed and placed based upon the least restrictive environment within which the juvenile's treatment needs can safely be met, identifying special needs of a juvenile, and identifying the level of structure and supervision required by a juvenile subject to bed availability.

(2) A juvenile shall be placed according to the classification procedures listed in the Classification and Placement Manual.

Section 3. Juvenile Rights. A written list of rights shall be provided to each juvenile during the admission process and signed by the juvenile. The following rights shall be afforded to all juveniles:

(1) Juveniles shall have the right of access to the courts and confidential contact with attorneys.

(2) Juveniles shall be free from discrimination based on race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status in making administrative decisions and providing access to programs.

(3) The juvenile and parents or guardians shall be involved in the treatment planning process to the maximum extent possible.

(4) The juvenile's records shall be confidential.

(5) Audiovisual or tape recordings used as a part of the juvenile's treatment shall only be used for teaching or therapy purposes with written permission from the juvenile and parents or guardians.

(6) Juveniles may participate in research studies approved by the Commissioner's Office with prior written informed consent of the juvenile and parents or guardians.

(7) Juveniles shall be treated in a humane manner and shall have the right to be protected from exploitation, neglect, and physical, sexual, and emotional abuse. This shall prohibit corporal punishment, intentional injury, use of intimidation, threatening, or abusive language toward the juvenile, either verbally, in writing, or by gesture. Any suspected abuse or neglect of a juvenile shall be reported in accordance with KRS 620.030.

(8) An academic and vocational program to meet an individual juvenile's needs shall be provided.

(9) Each juvenile detention center, youth development center, and group home shall designate space and time frames for juveniles to voluntarily participate in religious activities. Religious practices that pose a danger to the juvenile, other juveniles, or staff, or that create a danger to the security of the facility shall be prohibited.

(10) Juveniles shall have the right to refuse to participate in uncompensated work assignments unless the work is related to housekeeping or maintenance of the facility or personal hygienic needs, or the work is part of an approved vocational or training program.

(11) Access to medical, dental, and mental health care including twenty-four (24) hour emergency medical services shall be provided for juveniles in juvenile detention centers, youth development centers, and group homes.

(12) Living units shall have adequate lighting, heat, ventilation, and an overall safe environment maintained in compliance with state and local fire and safety laws and regulations.

(13) Juveniles shall be afforded daily opportunity for personal hygiene.

(14) Three meals a day and two snacks shall be provided to each juvenile in residential facilities. Special diets shall be provided when necessary to meet health or religious requirements.

(15) Juveniles shall be afforded the opportunity for a sufficient night's sleep in residential facilities.

(16) Juveniles shall be informed of the right to file a grievance.

(17) Juveniles shall be informed of the procedures for contacting outside investigative units to report any act in which the health or welfare of a resident is harmed or threatened with harm by a facility staff person. The juvenile shall sign an acknowledgment of receipt of these procedures.

(18) Telephones programmed to dial directly to the Internal Investigations Branch shall be installed and kept in good working order in each residential facility. A toll-free number for contacting the IIB shall be available and conspicuously posted in juvenile access areas of group homes and detention facilities. Telephones shall be located in areas that provide maximum availability while preserving program scheduling and services.

(19) Juveniles may also report allegations of dependency, abuse, neglect, and special incidents to the Cabinet for Health and Family Services.

Section 4. Out-of-State Placement. Referrals for out-of-state placement may be initiated if there are no resources within Kentucky to meet the juvenile's specific treatment needs.

Section 5. Incorporation by Reference. (1) [The following material is incorporated by reference:

(a) The "Department of Juvenile Justice Policy and Procedures: Admissions", February 11, 2019, which includes the following: 200Definitions (Amended 2/11/19); 201Classification (Amended 2/11/19); 202Youth Placement Priority (Amended 11/30/18); 203Daily Census and Population (Amended 11/30/18); 204Administrative Transfers (Amended 11/30/18); 205Youth Rights (Amended 2/11/19); 206Youth Access to Outside Investigative Agencies (Amended 11/30/18); and 207Out-of-State Placement (Amended 11/30/18); and

(b) The "Classification and Placement Manual", Amended 2/11/19, is incorporated by reference.

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

VICKI REED, Commissioner

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 10:00 a.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes admission, classification, and notice requirements for juveniles in the custody of the department in juvenile detention centers, youth development centers, and group homes.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper

administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance concerning admissions and classification of juveniles.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation sets admission requirements in the regulation and deletes the policy manual involving admissions from incorporation by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment provides the admission requirements in the regulation for easy reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the admission requirements in the regulation for easy reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The facilities will need to comply with the admission and classification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120,

605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

505 KAR 1:185. Day treatment programs.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645, 34 C.F.R. 300.111, **707 KAR 1:320**

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, ~~15A.240,~~ 605.150, 635.095, and 640.120 authorize the Justice and Public Safety

Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes general requirements for day treatment programs for juveniles committed to the department.

Section 1. Educational Services. (1) Educational services shall be provided to juveniles in a day treatment program. Educational services shall be made available to each juvenile upon admission and shall be open entry and open exit.

(2) Educational services shall be individualized to meet the assessment, educational, rehabilitative, and developmental instructional needs of each juvenile.

(3) Vocational Assessment. Juveniles who enter a day treatment program without a previously administered vocational assessment shall be administered a vocational assessment. The results shall be used to:

(a) Determine a juvenile's vocational aptitude and interests, learning and working styles, and career clusters;

(b) Assist DJJ and school district educational staff to integrate academic, vocational and work assignments, and treatment goals; and

(c) Provide a juvenile with workplace readiness skills.

(4) The results of educational and vocational assessments from the school district shall be used for the initial development, periodic review, and revision of an integrated Individual Learning Plan ~~[of Instruction]~~, Individual Education Plan if applicable, Individual Treatment Plan, ~~[Individual Learning Plan,]~~ Individual Learning Plan Addendum if applicable, and Aftercare Plan.

(5) ITP, ILP~~[IPI]~~, IEP, Section 504 plan, and Aftercare Plan. DJJ shall participate with school district staff, if invited, in the development, review, and revision of a juvenile's IEP, and Section 504 plan. DJJ shall integrate any accommodations from an IEP or Section 504 plan in a juvenile's ITP and Aftercare Plan~~[ITP, IPI, the IEP if applicable, and Aftercare Plan]~~. The ILP~~[IPI and IEP, if applicable,]~~ shall be integrated with the ITP and completed within fourteen (14) school days of admission.

(6) Child Find. Any staff who suspects that a juvenile may have an educational disability shall communicate that concern in writing to the Administrative Duty Officer and report it to the treatment team.

Section 2. Technical Programming. (1) If technical programming is available, the program shall have specific criteria for enrolling juveniles, and the criteria shall be included in the orientation handbook.

(2) The Superintendent shall ensure that juveniles only use power driven machines and tools under the following circumstances:

(a) The juvenile has been enrolled in a technical training program;

(b) The juvenile is performing tasks designated by the Office of Career and Technical Education for the training program in which the juvenile is enrolled;

(c) The certified technical teacher of the training program is supervising the juvenile;

(d) The juvenile has successfully completed the safety training and the safety test necessary to use the machines and tools or complete the task; and

(e) The certified technical teacher shall document that the student has completed safety training.

(3) The certified technical teacher of the training program and facility staff shall monitor the emotional state and consider the mental stability of the juvenile prior to allowing the juvenile to use power driven machines and tools or perform a potentially hazardous task.

Section 3. Searches. A juvenile may be searched for safety and security purposes. A search may include the juvenile's hair.

Section 4. Behavior. (1) During school hours, teachers shall direct juvenile behavior while juveniles are engaged with educational programming such as lessons, hands-on activities, school-day outings, community mentoring, vocational classes, and all teacher-led learning.

(2) Teachers shall collaborate with DJJ staff regarding appropriate consequences for an undesirable behavior.

(3) Teachers shall be included in the disciplinary review with the juvenile and DJJ staff.

(4) Acceptable school behavior and discipline information shall be incorporated into the Orientation Handbook and reviewed with each juvenile. A copy of the Orientation Handbook shall be posted at the school site. DJJ and education staff shall be provided a copy of the Orientation Handbook.

Section 5. Personal Property. (1) Allowable Personal Property. A juvenile may bring the following to a day treatment program:

(a) Key to access the juvenile's dwelling;

(b) Cell phone; and

(c) Cash, not to exceed ten (10) dollars.

(2) The program may set a different cash limit considering the needs of the juveniles in the program and the negative effects of available cash.

(3) The program may require allowed personal property to be locked away and not in the juvenile's possession during the school day or instructional time.

(4) Confiscated personal property shall be logged and secured. Law enforcement may be contacted if the juvenile's personal property poses a safety or security risk to the program.

(5) A juvenile may be reimbursed for damaged or lost personal property on a limited basis at the discretion of the superintendent.

(6) Unclaimed personal property shall be stored and retained at the program for not longer than thirty (30) school days.

Section 6. Telephone and Visitation. (1) A day treatment program shall provide juvenile access to a telephone for emergency calls.

(2) Visitation. Parental and caregiver visits shall be encouraged, and the program shall make provisions for assisting the parent or caregiver in visitation to the program. Visits shall be permitted for a parent or caregiver, or attorney during program hours, except if there is documented evidence that a visitor poses a threat to the safety of the juveniles or the security of the program or may disrupt the program.

Section 7. Counseling Services. (1) Counseling services shall be provided to each juvenile in accordance with the juvenile's individual treatment plan. Staff shall be available to provide counseling in emergency situations and upon a juvenile's request in accordance with each juvenile's ITP.

(2) Each juvenile attending school in a day treatment program shall have an opportunity for individual and group counseling.

(a) Individual counseling shall be:

1. Provided to each juvenile at a minimum of one (1) scheduled hour per week;

2. Used to help the juvenile make developmentally appropriate changes in thinking and behavior; and

3. Used to assist the juvenile in meeting goals and tasks identified on the juvenile's ITP;

(b) Group counseling. Group counseling shall be:

1. Provided to each juvenile at a minimum of two (2) scheduled hours per week;

2. Used to help the juvenile make developmentally appropriate changes in thinking and behavior;

3. Used to discuss specific and common issues, conflicts, and concerns;

(3) The juvenile's counselor may engage the juvenile's parent or caregiver as needed to assist the juvenile in meeting their educational treatment objectives.

Section 8. Youth Council. (1) A program shall have a youth council that meets monthly with the superintendent or designee. The youth council shall include representatives from each treatment group who shall present juvenile concerns.

(2) The youth council shall discuss and offer recommendations to the superintendent on issues including the following:

(a) Staff and juvenile relations;

(b) Programming issues;

- (c) Physical plant concerns;
- (d) Recreation;
- (e) Education;
- (f) Health and dietary issues; and
- (g) Youth activity fund.

(3) Written minutes shall be kept of each youth council meeting and shall be held on file for three (3) years by the superintendent or designee. The superintendent or designee and all participants shall sign an attendance sheet at the meeting.

VICKI REED, Commissioner

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 10:00 a.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes general requirements for day treatment programs for juveniles committed to the department.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the day treatment program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 38 DJJ day treatment employees, 156 juveniles, and their families.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The DJJ staff and juveniles will have to follow the requirements of the day treatment program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

(a) Initially: An exact cost of compliance is unknown, but it is not

anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

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

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice and school district employees involved in a day treatment program

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

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

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

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

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not

anticipated that this administrative regulation will increase current costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), [605.090(1)(b), (d), 610.110, 142 U.S.C. 622, 672, 675
 STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).

(3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).

(4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).

(5) "Emergency shelter" is defined by KRS 600.020(25).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement; and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-

study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means the standard representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.

(11) "Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.

(12) "Model program cost analysis" is defined by KRS 199.641(1)(c).

(13) "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.

(14) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(15) "Time study" is defined by KRS 199.641(1)(d).

(16) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement.

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:

(a) The child is referred for placement with a child-caring facility or child-placing agency;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs including:

1. Any significant medical history;

2. Current diagnoses, assessments, and treatment; and

3. Documentation indicating the child's medically complex status if the child is medically complex;

(e) Behavioral health needs including:

1. Screening tools utilized based upon the child's age; and

2. Current diagnoses, assessments, and treatment recommendations;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or other court involvement;

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need; and

(k) Religious background and practices.

(3)(a) If a child needs placement within a child-caring facility or a child-placing agency, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.

(b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:

(a) Complete the ~~[DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule, through January 31, 2023, or the]DPP-114, Child Caring and Child Placing Level of Care Schedule[, effective February 1, 2023,]~~ with the level of care payment rate for placement type:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child and his or her personal belongings that are small enough to be carried to the placement; and

(c) Notify the placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the placement coordinator of the location and date of placement.

(6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:

(a) Four (4) years of age or older; or

(b) Determined to be medically complex by designated cabinet staff;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to an assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) levels of care; and

(b) Return the completed CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, to the department and the child-caring facility or the child-placing agency;

(3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;

(4) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a child-caring facility; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(5) Reassign a child's level of care after the previous level has expired;

(6) Monitor each child-caring facility and child-placing agency;

(7) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(8) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment

Authorization, to the child-caring facility or child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides for the basic needs of the child;

(b) Provides guidance and nurturing;

(c) Provides supervision to meet the needs of the child;

(d) Provides educational support;

(e) Provides access to routine medical care; and

(f) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) Requires a routine home environment that meets the requirements of subsection (1) of this section;

(b) Has identified treatment needs based on available behavioral health screening and assessment information or current treatment recommendations or has been determined to be medically complex;

(c) Has a history of complex trauma related to maltreatment;

(d) Requires supervision in a structured supportive setting with:

1. Counseling available from professional staff;

2. Educational support; and

3. Services designed to improve physical and behavioral health and wellbeing;

(e) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(f) Requires a program flexible enough to allow increased:

1. Independence if the child is capable; or

2. Structure during temporary periods of regression.

(3) A Level III child shall be a child who:

(a) Has significant treatment needs as indicated by:

1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;

2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;

3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or

4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child; and

(b) Requires a highly structured supportive setting:

1. With frequent therapy or therapeutic services provided by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior;

2. That includes twenty-four (24) hour supervision; or

3. That provides safe and effective care for a severe, chronic medical condition, behavioral health issue, or other highly specialized needs.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).

(b) Each private child-caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and

b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of eighty (80)~~[ninety (90)]~~ percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

- 1. Child safety while in the care of a private child-caring facility or child-placing agency;
- 2. Child safety after reunification with the child's family;
- 3. Adequate educational support;
- 4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
- 5. Increased placement stability during the service period;
- 6. Increased achievement of permanency goals; and
- 7. Increased stability in less restrictive or permanent placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

- 1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and
- 2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies

that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

Section 6. Residential Care.

(1) A child-caring facility that cares for children in the custody of the cabinet shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300, Section 8, Residential Treatment Program, if providing treatment-oriented services.

(3) Only a child assigned as Level III shall be placed in residential care.

(4) The daily rate for residential care to a child-caring facility shall be:

(a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and

(b) ~~\$336.00~~\$298.50 per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2).

Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) ~~\$220.59~~\$193.50 per child per day for a child-caring facility with a treatment license; or

(b) ~~\$165.44~~\$145.12 per child per day for a child-caring facility without a treatment license.

(2) If a child with an assigned level of care enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) ~~[The basic daily rate for foster care shall be \$51.33] [\$44.82].~~

~~(2) The~~(2) ~~[If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rate for foster care shall be ~~\$51.33~~\$44.82 per child for:

(a) A child under the age of four (4) who has not been assigned a level; and

(b) A child over the age of four (4) with a level I assigned level of care.

~~(2)(3) The~~(2)(3) ~~[If assessed prior to July 1, 2022, the daily rates for therapeutic or treatment foster care shall be as follows:~~

(a) Levels I and II, if the child is stepped down from Level III or higher ~~\$76.10~~ per child;

(b) Level III – ~~\$83.16~~ per child;

(c) Level IV – ~~\$101.23~~ per child; and

(d) Level V – ~~\$139.96~~ per child.

~~(4) If assessed on or after July 1, 2022, upon the next utilization review, the]~~ daily rates for therapeutic or treatment foster care shall be:

(a) Level II – ~~\$99.50~~\$83.16 per child; and

(b) Level III – ~~\$139.96~~ per child.

~~(3)(4) A private agency foster home shall not receive a per diem that is less than the corresponding public foster home per diem published at~~
<https://www.chfs.ky.gov/agencies/dcb/dpp/Documents/statea>

[agencyfostercareperdiemrates.pdf\[https://www.chfs.ky.gov/agencies/dcb/dpp/Pages/agreements.aspx\]](https://www.chfs.ky.gov/agencies/dcb/dpp/Pages/agreements.aspx).

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Independent Living Programs.

(1) An independent living program shall be licensed pursuant to 922 KAR 1:305 and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

(a) ~~\$99.50~~[\$83.16] per child for Level I or Level II; and

(b) \$139.96 per child for Level III.

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

Section 11. Programs with Decoupled Rates. [(4)] A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

[(a)] Department for the cost of room, board, and watchful oversight; and

[(b)] Department for Medicaid Services or its designee for behavioral health treatment services.

Section 12. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of behavioral health needs; and

b. Identification and alleviation of related trauma symptoms, disability, or distress experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the trauma, disability, or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and

2. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 13. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section 12(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section 12(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section 14 of this administrative regulation.

Section 14. Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information that supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

2. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

3. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

4. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment, for a reassessment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the

gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 16 or 17 of this administrative regulation.

Section 15. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. The most recent Child and Adolescent Needs and Strengths assessment report or a comparable assessment of the child; and

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section 14 of this administrative regulation.

Section 16. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section ~~17(47)~~ of this administrative regulation.

Section 17. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22;

(b) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22;

(c) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22;

(d) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment", 01/22;

(e) "CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22;

(f) ~~"DPP-114T, Transitional Child-Caring and Child-Placing Level of Care Schedule", 07/22;~~

(g) "DPP-114, Child Caring and Child Placing Level of Care Schedule", 09/23[05/23][02/23]; and

~~(g)[(h)]~~ "DPP-888, Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs

and Facilities", 09/23[07/22].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 12, 2023

FILED WITH LRC: September 13, 2023 at 1:00 p.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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency consistent with the level and quality of care and service provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the per diem rates for specific levels of care provided for children with the highest needs in the custody of the state. The annual audited cost report and time study and preliminary data from the most recent rate study have been evaluated and the Department for Community Based Services (DCBS) has determined that a mid-cycle inflation adjustment is necessary to adequately reimburse child-placing and child-caring providers. Because documentation and analysis show that this rate increase is justified and needed, federal funding will be utilized in implementing this amendment. Documentation that the department received from the Children's Alliance requests that, "this rate increase be implemented as soon as possible as private child-caring

and child-placing agencies are struggling to cover their rapidly rising costs given the swift and unprecedented inflation rates, respond to the workforce crisis that has ensued since the pandemic and meet the increased need for behavioral health services. Providers need financial relief as soon as possible...". Material incorporated by reference is also being amended to reflect this rate increase. This administrative regulation and material incorporated by reference are being further amended in response to comments received to delete duplicative or unnecessary information and make corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the reimbursement rate for the care of children placed in child-caring and child-placing facilities. Facilities have struggled to maintain staff at safe staff-to-child ratios, which has caused facilities to not be able to accept the placement of children in the state's custody with high medical or behavioral health needs. DCBS needs to ensure that these facilities remain open and able to accept and care for children. Audits and studies have shown that the current rates are not adequate; therefore, this increase will be paid with federal funds. The Children's Alliance has stressed the urgent need to increase rates so that agencies can continue to provide needed services to the most vulnerable citizens. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. The health and welfare of these children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children requiring out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.641(2) states, "...when the department chooses to contract with a child-caring facility or child-placing agency for services to a child in the custody of or committed to the department, the department shall make payments to that facility based on the rate setting methodology developed from the model program cost analysis." This amendment ensures that payments to facilities are consistent with cost analyses, audits, and studies, and that private facilities have adequate funds to provide safe staff-to-child ratios and can continue to accept the placement of children requiring higher levels of care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2023, there were 5,057 unique children placed in a private facility or agency setting according to their needed level of care established in this administrative regulation. There were 49 child-caring agencies and 122 child-placing agencies licensed to operate in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards. It is the intent of the department that these increases will also help maintain staff and private foster homes so that the placement of children with higher therapeutic or medical needs will be accepted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to affected entities, only to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will receive a per

diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting higher standards and to address the staffing crisis experienced by many facilities. Children in the state's custody will benefit from having more placement options and providers that can provide the level of care they need.

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

(a) Initially: The per diem increases are within existing appropriations.

(b) On a continuing basis: The per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for these programs include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

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

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

(9) TIERING: Is tiering applied? This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state's custody.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672, 675.

(2) State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The increase in per diem rates are necessary in order to meet the higher standards required by the Family First Prevention Services Act and to address the staffing crisis experienced by facilities in providing care to children with high needs.

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate

for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of audits and studies to ensure the per diem increases are sustainable within appropriations.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amended After Comments)

922 KAR 2:255. Kentucky School-Aged Youth Development Credential.

RELATES TO: KRS 158.030, 164.518(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.8982(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. KRS 164.518(3) requires the cabinet to participate in the

promulgation of administrative regulations including monetary incentives for scholarship program participants. This administrative regulation establishes the requirements that shall be met for an applicant to obtain a School-Aged Youth Development Credential.

Section 1. Definitions.

(1) "Applicant" means an individual making an application for any level of a School-Aged Youth Development Credential.

(2) **"Cabinet-approved school-aged youth development topics" means subject matter relating directly to school-aged children based on developmentally appropriate and age-appropriate practice that have been approved by the cabinet or designated third party as meeting the training requirements established in 922 KAR 2:240.**

(3) "Child Development Associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(4) [(3)] "Clock hour" means a sixty (60) minute period of instruction.

(5) [(4)] "School-aged" means a child who meets the age requirements established in KRS 158.030 or who attends kindergarten, elementary, or secondary education.

Section 2. Eligibility Criteria, Application, and Approval for the Kentucky School-Aged Youth Development Credential for All Levels.

(1) An individual applying for a Kentucky School-Aged Youth Development Credential shall:

(a) Be at least eighteen (18) years of age;

(b) Complete and submit the following to the cabinet or its designee:

1. Verification of the completion of the cabinet[**-approved**] training "Introduction to Kentucky Credentials";

2. Verification of the completion of cabinet[**-approved**] training on trauma informed care;

3. Verification of the possession of a current Child and Adult First Aid and CPR Certification;

4. The DCC-255A, "Kentucky School-Aged Youth Development Credential Candidate Self-Assessment"; and

5. The DCC-255, "Kentucky School-Aged Youth Development Credential Application", which shall include documentation verifying that the individual meets the applicable requirements for the appropriate credential level established in Section 3, 4, or 5 of this administrative regulation; and

(c) Submit a letter of recommendation to the cabinet or its designee from a:

1. Current supervisor; or

2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor; and

(d) Meet the instructional and work or volunteer requirements established in Section 3, 4, or 5 of this administrative regulation.

(2) Upon approval of the documentation required by subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky School-Aged Youth Development Credential for a credential level established in Sections 3 through 5 of this administrative regulation.

Section 3. Level 1 Kentucky School-Aged Youth Development Associate Credential Requirements. In order to be approved as a Level 1 Kentucky School-Aged Youth Development Associate, an individual shall:

(1) Have completed sixty (60) clock hours of instruction in cabinet-approved school-aged[**-or**] youth development topics within the past two (2) years; or

(2) Have completed sixty (60) clock hours of instruction from an institution of secondary education in cabinet-approved school-aged[**-or**] youth development topics.

Section 4. Level 2 Kentucky School-Aged Youth Development Professional Credential Requirements. In order to be approved as a Level 2 Kentucky School-Aged Youth Development Professional, an

individual shall:

- (1) Have completed 120 clock hours of instruction in cabinet-approved school-aged or youth development topics within the past two (2) years and provide to the cabinet or designee a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-aged children in the past three (3) years;
- (2) Possess a current Military School-Age CDA;
- (3) Possess a current Preschool CDA and have completed an additional thirty (30) hours of instruction in cabinet-approved school-aged[age-or] youth development topics in the past three (3) years; or
- (4) Possess a current Preschool CDA and have completed all requirements for a Level 1 Kentucky School-Aged Youth Development Associate within the past three (3) years.

Section 5. Level 3 Kentucky School-Aged Youth Development Leader Credential Requirements. In order to be approved as a Level 3 Kentucky School-Aged Youth Development Leader, an individual shall:

- (1) Possess:
 - (a) An associate or bachelor's degree or higher in a school-aged[age-or] youth development field with a minimum of nine (9) credit hours specifically focusing on cabinet-approved school-age or youth development topics; or
 - (b) A bachelor's degree or higher in a field not related to school-age or youth development with sixty (60) additional hours of instruction in cabinet-approved school-aged[age-or] youth development topics within the past two (2) years; and
- (2) Provide a detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-aged children within the past three (3) years.

Section 6. Renewal of All Levels of a Kentucky School-Aged Youth Development Credential.

- (1) A Kentucky School-Aged Youth Development Credential shall be:
 - (a) Valid for three (3) years; and
 - (b) Renewable.
- (2) An application for renewal shall be submitted to the cabinet or its designee and include:
 - (a) A completed DCC-255;
 - (b) Documentation of forty-five (45) clock hours of cabinet-approved training or college coursework in school-aged[age-or] youth development topics within the past three (3) years;
 - (c) A detailed resume that includes 480 hours of work or volunteer experience in providing services directly to school-age children in the past three (3) years;
 - (d) Current Child and Adult First Aid and CPR Certification;
 - (e) A completed DCC-255A; and
 - (f) A letter of recommendation from a:
 1. Current supervisor; or
 2. Parent or guardian of a child that is currently registered in the applicant's program if the applicant does not have a supervisor.

Section 7. Denial of Application or Renewal.

- (1) The cabinet shall deny a Kentucky School-Aged Youth Development Credential or renewal if the individual fails to comply with:
 - (a) Section 2 of this administrative regulation for an initial application; or
 - (b) The corresponding requirements for the requested credential or renewal established in Section 3, 4, 5, or 6 of this administrative regulation.
- (2) If the School-Aged Youth Development Credential is denied, the individual:
 - (a) Shall be informed as to the unmet requirements that resulted in the denial; and
 - (b) May reapply after the requirements that caused the denial are met.

Section 8. Revocation of Credential.

- (1) The cabinet shall revoke a Kentucky School-Aged Youth

Development Credential from an applicant who:

- (a) Falsifies a record; or
- (b) Fails to comply with the requirements established in this administrative regulation.
- (2) An individual whose credential has been revoked may:
 - (a) Request a hearing pursuant to 922 KAR 2:260; or
 - (b) Reapply for a Kentucky School-Aged Youth Development Credential after two (2) years from the date of revocation.

Section 9. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) DCC-255, "Kentucky School-Aged Youth Development Credential Application", 2023; and
 - (b) DCC-255A, "Kentucky School-Aged Youth Development Credential Candidate Self-Assessment", 2023;
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbps/Pages/default.aspx>.

LESA DENNIS, Acting Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 1, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.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: Krista Quarles or Laura Begin

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an individual to obtain a Kentucky School-Aged Youth Development Credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for child care provider staff to voluntarily apply for and obtain this credential. Credentials assist in increasing the professionalism in the early childhood education field. Additionally, this will help increase the quality of trainings offered across the state as they are specialized and focused on the age group and content area of the credential. When providers take trainings tailored to the age group of children they serve, it increases the quality of care for children and families. New, required forms are incorporated in this administrative regulation. This administrative regulation is necessary to establish the requirements of KRS 199.896(17) and 199.8982(3), which require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. The credential and approval contained in this administrative regulation ensures model training is available for child care providers. Approximately 15 other states offer a similar credential with apprenticeships that increase workforce development in this job sector. This proposed administrative regulation is being further amended in response to written comments received to add a definition for clarification and to make minor corrections in the administrative regulation and incorporated material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing criteria to obtain a Kentucky School-Aged Youth Development Credential.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria and requirements for a Kentucky School-Aged Youth Development Credential. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, there were approximately 200 certified family child care providers and 1,800 licensed child care providers. Staff who work in these facilities specifically with school-aged children after school and during school breaks may want to pursue this credential although it will not be required by the state. These staff are often excluded from training and professional development, which is commonly centered around infants and toddlers. This credential will provide these staff with specialized training and credentialing and result in increased training opportunities specific to these providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care provider staff are not required to obtain this credential, but if they choose to do so, this administrative regulation outlines the requirements for an individual to obtain a Kentucky School-Aged Youth Development Credential. The training and education for each level is detailed within the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with obtaining this credential.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Obtaining these credentials is a professional development higher standard. Earning the credential states that you have the knowledge, special skills, and experience necessary to provide the highest level of quality in care and education for children.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for child care credentialing programs.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(17), 199.8982(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of child care credentialing programs. No costs are associated with this specific credential.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this specific credential.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.

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](#).

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769
 STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3),
 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions.

- (1) "Authority" is defined in KRS 164.740(1).
- (2) "Critical shortage area" is defined in KRS 164.769(2)(a).
- (3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
- (4) "Eligible program of study" is defined in KRS 164.769(2)(b).
- (5) "Expected family contribution" is defined in KRS 164.769(2)(c).
- (6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:
 - (a) Required by KRS 161.030 and established in 16 KAR 7:010; and
 - (b) Also referenced as the beginning teacher internship.
- (7) "Participating institution" is defined in KRS 164.769(2)(d).
- (8) "Professional Teaching Certificate" means the document issued to:
 - (a) An individual upon successful completion of the beginning teacher internship; or
 - (b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.
- (9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.
- (10) "Qualified teaching service" is defined in KRS 164.769(2)(e).
- (11) "Semester" is defined in KRS 164.769(2)(f).
- (12) "Summer term" is defined in KRS 164.769(2)(g).
- (13) "Teaching" means performing continuous classroom instruction that:
 - (a) Is:
 1. Pursuant to a professional teaching certificate in a position for which regular teacher certification is a prerequisite; or
 2. During participation in the Kentucky Teacher Internship Program (KTIP); and
 - (b) Shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process.

- (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its

instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be ~~\$2,000~~[1,250] for a summer session, ~~\$3,000~~[2,500] for a semester, and ~~\$6,000~~[5,000] for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be ~~\$2,000~~[325] for a summer session, ~~\$2,500~~[625] for a semester, and ~~\$5,000~~[1,250] for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate, or master's degree will be completed shall be \$500 per credit hour during a semester or summer session.]:

~~(a) \$210 per credit hour if the student is enrolled during a regular semester; or~~

~~(b) \$105 per credit hour if the student is enrolled in a summer term.];~~

Section 4. Disbursements.

(1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by

electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)

(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation.

(1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)

(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:

(a) Has completed the program of study;

(b) Is providing qualified teaching service; and

(c) Is prohibited from participating in KTIP solely as a result of

state budget limitations.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment.

(1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default.

(1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment, and progress of each student receiving aid under this

program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

Section 12. Refunds.

(1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Go Higher Grant;

(d) Teacher Scholarship;

(e) Kentucky Educational Excellence Scholarship;

(f) Kentucky Coal County College Completion Scholarship;

(g) National Guard tuition assistance; and

(h) Early Childhood Development Scholarship.

(7)

(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.

(8)

(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no

later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference.

(1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

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

GREG ROUSH, Chair-Elect

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, November 23, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769, and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships awarded under KRS 164.769.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the teacher scholarship program.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships made pursuant to KRS 164.769.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by increasing the maximum scholarship award amounts for the fall and spring semesters as well as summer term for all recipients and the per credit hour rate for those enrolled less than full-time.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to be consistent with the recent change to KRS 164.769, which eliminated the aggregate maximum award amount for this scholarship program thereby enabling an increase in awards thereunder.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing maximum annual award amounts under this scholarship program with no cap on the aggregate total.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by increasing the maximum award amounts for this scholarship program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2022-23 academic year, there were 432 applicants for teacher scholarships, 202 awards were offered and 156 awards made to students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to comply with this amendment, interested individuals are required to complete the designated scholarship application and satisfy the eligibility criteria set forth 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 will be no cost to potential award recipients in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, potential award recipients will be considered for an award at the increased levels provided for in this amendment.

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

(a) Initially: No additional costs will be incurred in order to implement this amended administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

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

The Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees. Although additional funds will be awarded based upon the changes in this amendment, the current appropriation for the program will support all eligible applicants at the increased award level for the current academic year.

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

indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

(c) How much will it cost to administer this program for the first year? No additional administrative costs will be incurred for administrative of this regulation amendment during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional administrative costs will be incurred for administrative of this regulation amendment during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The regulated entities – applicants for the teacher scholarship program - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

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

(c) How much will it cost the regulated entities for the first year? The regulated entities – applicants for the teacher scholarship program – will incur no costs for the first year in which this administrative regulation is in effect.

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

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

**PERSONNEL CABINET
Office of the Secretary
(Amendment)**

101 KAR 2:210. 2024[2023] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2024[2023] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2024[2023] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2024[2023] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2024[2023] edition, 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, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's website on the Kentucky Employees' Health Plan page under KEHP Documents at <https://personnel.ky.gov/Pages/Kentucky-Employees'-Health-Plan.aspx> [Docs, Forms and Legal Notices page at: <https://personnel.ky.gov/Pages/healthinsurance.aspx>].

MARY ELIZABETH BAILEY, Secretary

APPROVED BY AGENCY: September 8, 2023

FILED WITH LRC: September 15, 2023 at 9:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not

be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 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: Chris Chamness, Deputy Commissioner, Department of Employee Insurance, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email Chris.Chamness@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Chamness

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2024 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2024.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2024 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2024 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2023 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2023. The amendment adds and incorporates by reference the 2024 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2024.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2024. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under

the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2024 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2024 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 181,512 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects approximately 294,495 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

(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: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2024 plan year handbook. The 2024 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2024 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2024. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2024 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2024, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2024, employee contributions to health coverage premiums remained unchanged across all plans, as compared to 2023 premiums. Employer premium contribution amounts increased 16.5% across all plans combined, as compared to 2023 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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

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

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? The 2024 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2023 open enrollment season and throughout the 2024 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The regulation does not create any cost savings or expenditures beyond the re-sources to promulgate this regulation.

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

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

regulation does not create any cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None. This regulation will not generate any cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation does not create any cost for regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? The regulation does not create any cost savings or expenditures for subsequent years.

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

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation will not have a major economic impact.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the Department of

Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

(4) An applicant shall provide evidence of completion of the jurisprudence examination required by KRS 314.042(1)(d).

Section 2. Education and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her

Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification ~~[and]~~or at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain and submit evidence of current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the KSP and the FBI;

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the certification or recertification prior to the expiration date.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b) 1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send written notice to the ~~APRN~~[APRN's address of record that the certification or recertification is about to lapse and a notice] if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If a hearing is requested and the order of the board is adverse to the APRN, the board may impose the costs pursuant to administrative regulation 201 KAR 20:162, Section 7. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161 that indicate that reinstatement would create an immediate danger to the public health, safety, or welfare, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report in such cases.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 12. Dual Designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: [tps://secure.kentucky.gov/formservices/Nursing/PendReg](https://secure.kentucky.gov/formservices/Nursing/PendReg)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to obtain an Advanced Practice Registered Nurse (APRN) license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.042, which requires the Board to promulgate an administrative regulation concerning obtaining an APRN license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the standards and process for obtaining an APRN license.

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

(a) How the amendment will change this existing administrative regulation: The amendments provide that the board may request evidence of the APRN's current national certification; remove the requirement that the Board notify the APRN that the certification is about to expire; and state that if the APRN requests a hearing regarding the license being voided due to the lapse of the national

certification, and the result of the hearing is adverse to the APRN, the Board may impose the costs of the hearing.

(b) The necessity of the amendment to this administrative regulation: The amendments clear up language and removes a notice requirement that has been used as a procedural defense when the APRN has allowed the certification to lapse.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: The amendments make the regulation clearer and it removes an onerous notice requirement from the Board staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky APRNs, approximately 14,000 licensees.

(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 APRNs will have to maintain their national credentialing, which is required for APRN licensure.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The APRNs will be in compliance with statutory and regulatory requirements.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 218A.205(3)(h), (8), 314.042, 314.103, and 314.131(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.042, 314.091, 314.193(2), 314.195

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.042, 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314[,] and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse (APRN) and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled

Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(11) [(40)].

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Good standing" is defined by KRS 314.039.

(5) "Immediate family" means a spouse, parent, parent-in-law, stepparent, child, stepchild, son-in-law, daughter-in-law, sibling, stepsibling, brother-in-law, sister-in-law, grandparent, grandchild, spouse of grandparent or grandchild [child, sibling, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, step-child, step-sibling], or other person [relative] residing in the same residence as the APRN [a prescribing practitioner].

(6) "KBML" means the Kentucky Board of Medical Licensure.

(7) [(5)] "PDMP" ["KASPER"] means the electronic prescription drug monitoring program system for monitoring scheduled controlled substances and medicinal cannabis currently in use in Kentucky pursuant to KRS 218A.202, including the Kentucky All Schedule Prescription Electronic Reporting (KASPER) System [established in KRS 218A.202].

Section 2. (1) The practice of the APRN [advanced practice registered nurse] shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Oncology Nursing Scope and Standards of Practice;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; and

(p) Standards for Professional Nursing Practice in the Care of Women and Newborns.

Section 3. CAPA-CS Practice Requirements for APRNs

(1) In the performance of advanced practice registered nursing, the APRN [advanced practice registered nurse] shall seek consultation or referral in those situations outside the APRN's [advanced practice registered nurse's] scope of practice.

(2) An APRN wishing to have a CAPA-CS in the first year of the APRN's licensure must be employed by a health care entity or provider. If the employing provider is an APRN, the employing APRN shall have been granted an exemption under Section 7 of this administrative regulation.

(3) During term of the CAPA-CS, the APRN and the collaborating physician shall meet, either in person or via video conferencing, to review the APRN's reverse PDMP report. The review may include information from the patient's medical record that relates to the condition or conditions being treated with controlled substances by the APRN.

(a) Both the APRN and the physician shall maintain a record of:

1. The meeting date;

2. A summary of discussions; and

3. Any recommendations made shall be made in writing.

(b) The record shall be maintained by both parties for a period of one (1) year past the expiration of the APRN CAPA-CS.

(c) The APRN's meeting records shall be subject to audit by the board and the physician's records shall be subject to audit by the KBML. The sole purpose of the audit shall be to document that the collaboration meetings have taken place to verify compliance with this section.

(4) In the first year of the CAPA-CS, the APRN and a physician shall meet at least quarterly; and

(5) In the ensuing three (3) years of the CAPA-CS, the APRN and the physician shall meet at least biannually.

Section 4. Advanced practice registered nursing shall include prescribing and administering medications, as well as~~[and]~~ ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the APRN~~[advanced practice registered nurse]~~.

Section 5. Advanced practice registered nursing shall not preclude the practice by the APRN~~[advanced practice registered nurse]~~ of registered nursing practice as defined by KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;
2. Practice address;
3. Phone number;

4. License number of both the APRN~~[advanced practice registered nurse]~~ and each physician who is a party to the agreement; and

5. Population focus and area of practice of the APRN and each physician~~[advanced practice registered nurse]~~.

(b) An APRN~~[advanced practice registered nurse]~~ shall use a~~[the Common]~~ CAPA-NS Agreement~~[form]~~.

(c) An APRN shall use the Standardized CAPA-CS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall submit an online notification~~[file with the board the APRN Prescriptive Authority Notification Form]~~.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall submit an online notification~~[file the APRN Prescriptive Authority Notification Form]~~.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(11)(b)~~[(40)(b)]~~, the APRN shall submit an online notification~~[file with the board the APRN Prescriptive Authority Notification Form]~~.

(d) To notify the board that the requirements of KRS 314.042(14) have been met and request that the APRN be exempt from prescribing scheduled legend drugs under a CAPA-CS, the APRN shall complete the request for APRN exemption from CAPA-CS prescriptive authority and pay the listed fee in administrative regulation 201 KAR 20:240, Section 3(1)(e). Each submitted request shall be subject to the fee, regardless of whether the board grants the exemption after making a determination under Section 7 of this administrative regulation.

(e) All notifications, rescissions, and exemption requests shall be submitted by the APRN to the board via the online KBN Nurse Portal at www.kbn.ky.gov, and shall include the information and documentation required by subsections (1) and (2) of this section.

(f) Upon request by the Board, the APRN shall furnish to the board a copy of the executed CAPA-NS Agreement or Standardized CAPA-CS Agreement Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)~~[(a)]~~ An APRN with controlled substance prescriptive authority~~[a CAPA-CS]~~, shall:~~[-]~~

(a) Obtain a United States Drug Enforcement ~~[Agency]~~Administration (DEA) Controlled Substance Registration Certificate and shall report ~~[all]~~the APRN's Kentucky DEA number~~[numbers]~~, ~~[including a DEA-X Controlled Substance Registration Certificate]~~, and any change in the status of a certificate by providing a copy of each registration certificate to the board within

thirty (30) days of issuance.

(b) ~~[An APRN shall -]~~Register for a master account with the ~~[Kentucky All Schedule Prescription Electronic Reporting System (KASPER)]~~PDMP, within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the ~~[KASPER]~~PDMP master account registration certificate shall be submitted to the board via the online KBN Nurse Portal~~[APRN Update portal]~~ within thirty (30) days of receipt of confirmation of registration by ~~[KASPER]~~the PDMP.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS ends unexpectedly for reasons outside the APRN's control such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician, the APRN may continue to prescribe non-scheduled legend drugs for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively. If an APRN's CAPA-CS ends unexpectedly, the APRN [with a CAPA-CS] shall cease prescribing controlled substances [if the collaborative agreement unexpectedly ends,] until the CAPA-CS is resumed, [or] the APRN enters into a new CAPA-CS, or the APRN is granted an exemption by the Board under Section 7 of this administrative regulation.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, <https://kbn.ky.gov>, ~~[utilizing the tab APRN Update]~~. The board shall not accept documents or information sent in any other format.

Section 7. CAPA-CS Exemption Review Request. (1) An APRN who wishes to request a CAPA-CS exemption pursuant to KRS 314.042(14) shall:

(a) Complete a CAPA-CS exemption review request the board's website as required in Section 6(8) of this administrative regulation;

(b) Submit the fee required by 201 KAR 20:240, Section 3(1)(e); and

(c) Comply with the requirements established in KRS 314.042(14) and this administrative regulation.

(2) Upon receipt of the CAPA-CS exemption review request, the board shall verify the following:

(a) The APRN has had four (4) years of controlled substance prescribing authority;

(b) The APRN's license is in good standing;

(c) The APRN has maintained a DEA registration and a current registration certificate is on file with the board;

(d) The APRN has maintained a PDMP registration and a current registration is on file with the board;

(e) That a current Notification of a CAPA-CS for the APRN is on record with the board; and

(f) The APRN has an active account with the PDMP.

(3) Upon receipt of the CAPA-CS exemption review request, the board shall:

(a) Perform a criminal background check for any unreported misdemeanor or felony convictions in Kentucky; and

(b) Perform a check of the coordinated licensure information system specified in KRS 314.475 for any unreported disciplinary actions in another state.

(4) The APRN submitting the request shall cooperate with supplemental requests for documentation before the board makes a determination that the APRN's license is in good standing pursuant to KRS 314.042(14).

(5) An APRN wishing to practice in Kentucky through licensure by endorsement may request an exemption under this section.

(a) An APRN wishing to practice in Kentucky through licensure by endorsement is exempt from the CAPA-CS requirement if the APRN:

1. Has met the prescribing requirements for controlled substances in a state that grants such prescribing authority to APRNs;

2. Has had authority to prescribe controlled substances for at least four (4) years; and

3. Has a license in good standing.

(b) An APRN wishing to practice in Kentucky through licensure by endorsement who has had the authority to prescribe controlled substances for less than four (4) years and wishes to continue to prescribe controlled substances shall enter into a CAPA-CS with a physician licensed in Kentucky and comply with the provisions of KRS 314.042(11), until the requirements of this section are met.

(6) If the board determines that the APRN is eligible for the exemption after a review and determination of the exemption request under this section, the board shall notify the APRN in writing that the CAPA-CS is no longer required. The board shall not require the APRN to maintain a CAPA-CS as a condition to prescribe controlled substances unless the board imposes such a requirement as part of an action instituted under KRS 314.091(1).

(7) If the board denies the exemption request, the denial shall be in writing and shall state the reasons for the denial. The requestor may request a hearing pursuant to KRS 13B within twenty (20) days of receiving written notification of the denial. If a hearing is requested and the order of the board is adverse to the advance practice registered nurse, the board may impose costs pursuant to administrative regulation 201 KAR 20:162, Section 7.

(8) The APRN nurse shall not prescribe controlled substances without a CAPA-CS until the board has completed its review and has notified the APRN in writing that the APRN is exempt from the CAPA-CS requirement.

Section 8.[Section—7.] Prescribing Medications without Prescriptive Authority. Prescribing nonscheduled legend drugs[medications] without a CAPA-NS or prescribing controlled substances without a CAPA-CS shall constitute a violation of KRS 314.091(1), unless:[except if]

(1) In the case of nonscheduled legend drugs, the[a] CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period established in Section 6(6) of this administrative regulation; or[-]

(2) In the case of controlled substances, the APRN was granted an CAPA-CS exemption by the Board under KRS 314.042(14)(e) prior to the date the medications were prescribed.

Section 9.[Section—8.] The board may make an unannounced visit to an [advanced-practice-registered-nurse] APRN's practice to determine if the [advanced-practice-registered-nurse's-practice] it is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, [-, and patient] Patient and prescribing records shall be made available for immediate inspection.

Section 10.[Section—9.] Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRNs[APRN] with controlled substance prescriptive authority[a—CAPA-CS, —if prescribing a controlled substance]. It also applies to the utilization of [KASPER]the PDMP.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query [KASPER]the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query [KASPER]the PDMP no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report or a copy or saved image of the [KASPER]PDMP report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's [KASPER]PDMP report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN,[-] in addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether [or—not] the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query [KASPER]the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an

unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

- (a) Medical history and physical or mental health examination;
- (b) Diagnostic, therapeutic, and laboratory results;
- (c) Evaluations and consultations;
- (d) Treatment objectives;
- (e) Discussion of risk, benefits, and limitations of treatments;
- (f) Treatments;
- (g) Medications, including date, type, dosage, and quantity prescribed;
- (h) Instructions and agreements;
- (i) Periodic reviews of the patient's file; and
- (j) All [KASPER]PDMP report identification numbers and the date of issuance of each [KASPER]PDMP report.

(11) The requirement to query [KASPER]the PDMP shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries [KASPER]the PDMP for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

- a. Substitutes a controlled substance for the initial prescribing;
- b. Cancels any refills for the initial prescription; and
- c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall review a reverse [KASPER]PDMP report for the preceding six (6) months to determine if the information contained in [KASPER]the PDMP is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

- (a) First contacting the reporting pharmacy;
- (b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 11. ~~[Section 40.]~~ Immediate Family and Self-prescribing or Administering Medications.

(1) An APRN shall not self-prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

- (a) In an emergency situation;
- (b) For a single episode of an acute illness through one (1) prescribed course of medication; or
- (c) In an isolated setting, if no other qualified practitioner is available.

(4)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 12.~~[Section 14.]~~ Incorporation by Reference. (1) The following material is incorporate by reference:

- (a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;
- (b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;
- (c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;
- (d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;
- (e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;
- (f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;
- (g) "Scope of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;
- (h) "Standards of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;
- (i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;
- (j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;
- (k) "Standards for Office Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;
- (l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;
- (m) "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;
- (n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;
- (o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 Edition, American College of Nurse Midwives;
- (p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;
- (q) "Standardized CAPA-CS Agreement Form", 9/2023~~[APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing]~~; and
- (r) "[Common-]CAPA-NS Agreement Form", 9/2023~~[6/2015, Kentucky Board of Nursing]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>~~[https://kbn.ky.gov/legalopinions/Pages/laws.aspx]~~.

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets standards for APRN practice.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.
 - (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 setting standards of practice.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards of practice.
- (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 clears up regulatory language to use "APRN"; adds definitions for "Good standing", "Immediate family" and "PDMP" (prescription drug monitoring program). It establishes regulatory standards for APRNs engaged in a CAPA-CS, including creation of a new CAPA-CS form. The amendments further provide for the regulatory process by which an APRN may request an exemption from the CAPA-CS requirement, in accordance with Senate Bill (SB) 94 (2023RS).
 - (b) The necessity of the amendment to this administrative regulation: These regulation amendments were necessary due to SB 94, and the changes to KRS 314.042.
 - (c) How the amendment conforms to the content of the authorizing statutes: By clearly stating requirements.
 - (d) How the amendment will assist in the effective administration of the statutes: By clearly stating standards, procedures, and requirements.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky APRNs, approximately 14,000 licensees.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: APRNs who wish to be in a CAPA-CS will need to use the form incorporated by reference. If the wish to request an exemption, they must be in good standing, provide a DEA and a PDMP registration, and meet the 4-year prescribing requirement.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost, other than the exemption request fee in 201 KAR 20:240, which is mandated by KRS 314.042(14)(b)(4).
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative regulation and KRS 314.042, and will be authorized to prescribe controlled substances.
 - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No additional cost.
 - (b) On a continuing basis: No additional cost.
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
 - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No fees are increased; however, a fee of \$50 has been proposed in 201 KAR 20:240, which is mandated by KRS 314.042(14)(b)(4), and currently in promulgation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee; however, see KRS 314.042(14)(b)(4), and 201 KAR 20:240.

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes KRS 218A.205(3)(a), (b), 314.131(1), 314.042, and 314.193.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 218A.010, 218A.170, 314.011, 314.042, 21 U.S.C. 823, 42 U.S.C. 1395

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

(3) "Consultation" means the process by which an APRN directs the patient to a physician, APRN, or other specialist, as required by Section 3(3)(a), Section 3(4)(b)2., or Section 3(4)(g)2. of this administrative regulation to render an opinion with regard to the prescribing of Buprenorphine to the patient, and includes the requirements as established in Section 8 of this administrative regulation.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine for Opioid Use Disorder unless that APRN possesses the minimum qualifications established in this section.

(1) The APRN shall obtain and maintain in good standing a ~~[DATA 2000-waiver and]~~ registration as issued by the United States Drug Enforcement Administration (DEA) ~~[to—prescribe Buprenorphine for the treatment of Opioid Use Disorder] and an active PDMP account as defined by administrative regulation 201 KAR 20:057, Section 1(7).~~

(2) The APRN shall:

(a) Be a DEA-registered prescriber ~~[of Buprenorphine]; and~~

(b) Have completed an eight (8) hour continuing education training on managing and treating opioid and other substance abuse disorders as required by administrative regulation 201 KAR 20:215, Section 5(2)[obtained medication-assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course].

(3) The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4), via the KBN Nurse Portal ~~[APRN Update online—portal]~~ at https://kbn.ky.gov/aprn_practice/Pages/aprn_update.aspx.

(4) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of Buprenorphine. ~~[This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.]~~

(5) ~~[It is not within the scope of practice for an APRN who does not hold a DATA 2000 waiver to conduct a focused examination required to prescribe Buprenorphine for the treatment of substance use disorders.]~~

(6) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

~~(6)(7)~~ The APRN who is at a remote location from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in 42 U.S.C. 1395m(m), shall comply will applicable

federal and state laws.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone;

(c) As administered under supervision in an APRN's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one (1) week.

(3)(a) Except as provided in paragraph (b) of this subsection, buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address a documented extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes buprenorphine for supervised withdrawal or for the treatment of opioid use disorder shall comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall include:

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

e. A focused physical examination of the patient; and

f. Appropriate laboratory tests, which may include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology. If an appropriate justification for initiation of treatment in advance of the review of laboratory tests is documented by the APRN, this subsection shall be satisfied though the documentation of a plan for obtaining and reviewing the laboratory tests required by this subsection within thirty (30) days of initiating treatment.

2. Document a plan to obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment, which shall require:

a. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient; or

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

3. Obtain and review a [KASPER or other prescription drug monitoring program (PDMP)] report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation

and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with buprenorphine to the patient;

5. Obtain written informed consent from the patient for treatment;

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates the patient's participation in a behavioral modification program, which may include counseling or a twelve (12) step facilitation.

(b)1. Prior to initiating treatment, the APRN shall recommend that female patients of child bearing age and ability submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

2. Prior to prescribing buprenorphine to a patient who is pregnant or breastfeeding, an APRN who is not an obstetrical care provider shall have a plan to obtain and document consultation with an obstetrical care provider to co-manage the patient's care. The APRN shall document a patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct or supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal;

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection; and

4. Schedule visits at the same frequency as the previous treatment provider would have been required to or more frequently if deemed necessary by the APRN.

(e) After initial induction of buprenorphine, the APRN shall prescribe to the patient an amount of buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall ensure that the patient is seen no later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction and at intervals of no more than fourteen (14) days for the second month after induction.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the patient shall be seen at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and
b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) After initial induction of Buprenorphine, the APRN shall review compliance with the recommendations of the treatment plan and drug screen results at each visit to help guide the treatment plan. Current [KASPER and other] relevant PDMP reports shall be obtained no less frequently than once every three (3) months, to help guide the treatment plan.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and
b. Accurately document the same in the patient record.

2. Appropriate evaluation of continued Buprenorphine prescribing shall include documented consideration of initial laboratory test results as specified in subsection (4)(a)1.f. of this section, subsequent laboratory test results, and the patient's prior medical records. Appropriate evaluation of continued Buprenorphine prescribing shall also include, if appropriate and relevant, adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning, if weaning is clinically appropriate.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count.

b. At least one (1) of those two (2) drug screens shall be confirmed by either gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

c.[b.] Each drug screen shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, alcohol, and cocaine.

[c. The two (2) drug screens confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS) shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.]

d. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and
(ii) Document in the patient record.

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and
2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment

directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date. Replacement medication shall not be authorized by the APRN in the absence of an individual assessment, specific consideration of all prior instances of lost or stolen medication, and documented discussion with the patient.

(k) After initial induction, the APRN shall:

1. Implement a treatment plan that requires objective behavioral modification by the patient.

2. The behavioral modification plan shall include the patient's participation in a behavioral modification program that shall include counseling or a twelve (12) step facilitation.

Section 4. Continuing Education. An APRN who prescribes~~has obtained a waiver and registration as issued by the DEA to prescribe~~ buprenorphine for the treatment of Opioid Use Disorder shall complete continuing education pursuant to~~a total of four (4) hours annually in addiction disorders, including the one and one-half (1.5) contact hours in pharmacology as defined by~~ 201 KAR 20:215, Section 5(1)(b)[(c)].~~The pharmacology hours shall be on the dual subjects of addiction disorders and pharmacology.]~~

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting.

(1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

(a) The APRN has determined that the use of buprenorphine will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The APRN obtains and documents written informed consent from the patient specific to risks and benefits of Buprenorphine treatment; and

(c) The APRN provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The APRN shall initiate Buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 6. Telehealth. Nothing in this administrative regulation shall be construed to prohibit prescribing buprenorphine via telehealth. The prescribing APRN shall follow the standards set by 201 KAR 20:520.

Section 7. Documented Deviation from Professional Standards for Prescribing Buprenorphine. If an APRN is unable to conform to professional standards for prescribing Buprenorphine as set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN shall document those circumstances in the patient's record and only prescribe Buprenorphine to the patient if the patient record appropriately justifies the prescribing under the circumstances and in accordance with SAMHSA guidelines.

Section 8. Consultation Requirements. (1) Consultation shall not require an in-person visit.

(2) It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication.

(3) The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review.

(4) It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation.

(5) A consultation may involve the consultant providing advice and information to the APRN or patient.

(6) It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as deemed appropriate by the consultant.

(7) Consultation shall be fully documented in writing by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations.

(8) The APRN shall discuss the consultant's recommendations with the patient.

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for advanced practice registered nurses (APRN) to prescribe buprenorphine for treatment of opioid use disorder.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(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 setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder.

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

(a) How the amendment will change this existing administrative regulation: The amendments do the following: Removes references to the X-waiver; Require that an APRN who prescribes Buprenorphine shall have an active DEA registration and Prescription Drug Monitoring Program (PDMP) account; Requires that an APRN who prescribes Buprenorphine shall have eight hour continuing education training on managing and treating

opioid and other substance abuse disorders, as well as continuing education, see also 201 KAR 20:215, currently in promulgation; Updates "KASPER" to "PDMP", see 201 KAR 20:057, currently in promulgation; and Clarifies the patient drug screening requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to keep the standards current.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards governing APRN prescribing of Buprenorphine.

(d) How the amendment will assist in the effective administration of the statutes: By having current and appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Nursing currently licenses approximately Kentucky APRNs who are authorized to prescribe of controlled substances, approximately 2334, in the treatment of substance use disorder.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: APRNs who prescribe Buprenorphine in the treatment of opioid use disorder will be required to comply with the new standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the new standards.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional ongoing costs are directly attributable to the amendments to this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 194A.540, 218A.205(3)(i), 314.011(12), 314.042(11), 314.073, 314.991(1)-(3), 620.020(8)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation as established in subsection (1) through (4) of this section shall be:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or

(c) Have been recertified during the earning period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior; and

5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related journal; or

(c) Participation as a preceptor for at least one (1) nursing student or new employee:

1. That has a preceptorship that shall be for at least 120 hours;

2. Requires a one (1) to one (1) relationship between the preceptor and the student or employee;

3. Authorizes the preceptor to train more than one (1) student or employee and to combine the hours to total 120 hours; and

4. Includes that the preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment.

1. The nurse shall submit the Nursing Continuing Education Employment Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period[-]; or

2. The board may accept from the employer a standard employee evaluation, which covers a period of at least six (6) months during the earning period.

(5) Contact hours of continuing education earned for the methods of continued competency validation as established in subsection (1) or (4) of this section may be earned by:

(a) 1. A nursing continuing education presentation that is:

a. Designed and developed by the presenter;

b. Presented to nurses or other health professionals;

c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and

d. Offered by a provider approved pursuant to 201 KAR 20:220.

2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.

1. Contact hours shall be calculated as follows:

a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:

a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

b. An academic course that is applicable to the nurse's role and

beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 4. (1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1)(a) An Advanced Practice Registered Nurse (APRN)[Advanced practice registered nurses who do not have a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) or a waiver and registration issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine for the treatment of opioid use disorder] shall earn a minimum of five (5) contact hours in pharmacology, as required by KRS 314.073(8).

(b) [Advanced practice registered nurses]An APRN who is registered with the DEA and has a PDMP account, as defined by administrative regulation 201 KAR 20:057, Section 1(7), [with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) who do not have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder.]shall earn a minimum of five (5) contact hours in pharmacology, including at least [one and one-half (1.5)]three (3) contact hours on [the dual subjects of pharmacology and]neither pain management or addiction disorders.

(c) [Advanced practice registered nurses who have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn:

1. A minimum of five (5) contact hours annually in pharmacology, of which one and one-half (1.5) pharmacology hours shall be on the dual subjects of addiction disorders and pharmacology; and

2. An additional two and one-half (2.5) contact hours annually on addiction disorders.

(d) To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.

(e) Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) After June 27, 2023, and before the advanced practitioner's next scheduled DEA registration, an APRN who has a DEA registration shall earn a minimum of eight (8) hours on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder.

(3) The following APRNs shall be deemed to have satisfied the earning requirement in subsection (2) of this administrative regulation:

(a) Those who graduated from an advanced practice nursing school within five (5) years prior to June 27, 2023, and have successfully completed a comprehensive curriculum that included at least eight (8) hours of training on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder; or

(b) Those who have satisfied this training by earning a minimum of eight (8) hours of training on treatment and management of patients with opioid or other substance use disorders. Past trainings on the treatment and management of patients with opioid or other

substance use disorders can count towards a practitioner meeting this requirement, including past DATA-Waiver trainings.

(c) In addition to continuing education providers approved by the board pursuant to 201 KAR 20:220, groups approved by the DEA or the Substance Abuse and Mental Health Services Administration (SAMHSA) may provide trainings that satisfy the earning requirement of subsection (2) of this administrative regulation.

(4) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(5) Registered nurses and licensed practical nurses shall earn, within three (3) years of licensure, a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6), and a minimum of three (3) contact hours on domestic violence, and elder abuse, neglect, and exploitation as required by KRS 194A.540.

(6) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency requirement in subsection (6) of this section on or before July 1, 2023.

(7) Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement, or reinstatement after July 1, 2022, shall satisfy the continuing competency requirements in subsection (6) of this section within three (3) years of licensure.

(8) Nurses shall earn a minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1) contact hour that addresses:

(a) Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

(b) A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;

(c) Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

(d) Ethical legal considerations of caring for patients and nurses who are suicidal.

(b) Nurses shall earn a minimum of one and one-half (1.5) contact hours in implicit bias that addresses:

1. The impact of historical racism and other forms of invidious discrimination on the provision of healthcare;

2. Methods of evaluating the presence and extent of implicit bias; and

3. Measures that may be taken to reduce implicit bias.]

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via <https://cebroke.com>.

(b) Copies shall be furnished within twenty (20) days of the date a written request is sent to the last known email address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be found to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2023[9/2005];

(b) "Nursing Continuing Education Employment Evaluation Form", 9/2023[6/2024]; and

(c) "Preceptor Continuing Education Verification Form", 9/2023[6/2024].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx> [<https://kbn.ky.gov/legalopinions/Pages/laws.aspx>].

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at:

<https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes Continuing Education (CE) requirements for nurses, as required by KRS 314.073 and 314.131.

(b) The necessity of this administrative regulation: CEs are mandated by KRS 314.073 and 314.131.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting CE requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting CEs for required training on subjects to maintain competency.

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

(a) How the amendment will change this existing administrative regulation: The amendments provide that the Board may accept a satisfactory standard employee evaluation, in lieu of a "Nursing Continuing Education Employment Evaluation Form" to obtain seven hours of CE credit; remove references to educational requirements for APRNs with an X-waiver; streamline requirements for APRNs who have a DEA certification and a PDMP account to require 3 hours of CEs on either pain management or addiction disorders; require that an APRN who has prescribes controlled substances shall have had eight hours of education training on managing and treating opioid and other substance abuse disorders, but provides an exemption for APRNs who previously held an X-waiver; provide that training by groups approved by the DEA and the Substance Abuse and Mental Health Services Administration; and remove the Implicit Bias training from continuing education requirements.

(b) The necessity of the amendment to this administrative regulation: To provide nurses with an option to provide CEs, to removed references to the X-waiver requirement, which was eliminated in December of 2022; to remove Implicit Bias training as a requirement.

(c) How the amendment conforms to the content of the authorizing statutes: By setting CE standards in accordance with KRS 314.073 and 314.131.

(d) How the amendment will assist in the effective administration of the statutes: By assisting with the administration of KRS 314.073 and 314.131.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses licensed by the board, approximately 90,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If audited, nurses will need to provide evidence of meeting CE requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is impossible to determine the amount, each CE may be obtained for free or a cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with statutes and regulations and continued competency.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. Or reasonable fees may be recouped by regulation established under KRS 314.073(7) and KRS Chapter 13A.

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

not required at this time.

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes KRS 218A.205, 314.073, 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.073(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the Board of Nursing to

promulgate administrative regulations establishing requirements for continuing competency and approval of providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definition. "Continuing education activity" means an offering given by a provider of continuing education who has been approved or accepted by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

Section 2. (1) A provider of continuing education applicant who wants approval by the board to offer a continuing education activity shall submit an:

(a) Application for Continuing Education Provider Approval; and

(b) Application fee as established in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

(a) Application for Continuing Education Provider Renewal; and

(b) Fee as established in 201 KAR 20:240.

(4) Renewal shall be for two (2) years.

(5)(a) A continuing education activity that is given by a continuing education provider that has received approval by one (1) of the following organizations shall be accepted by the board:

1. American Association of Nurse Practitioners;

2. American Association of Critical Care Nurses;

3. American Association of Nurse Anesthetists;

4. American College of Nurse Midwives;

5. American Nurses Credentialing Center;

6. Association of Women's Health, Obstetric and Neonatal Nurses;

7. Nurse Practitioners in Women's Health;

8. National Association of Pediatric Nurse Practitioners;

9. National Association for Practical Nurses Education and Service;

10. National Association of Licensed Practical Nurses;

11. National League for Nursing; or

12. State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement in 201 KAR 20:215.

(6)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4. Providers shall comply with the standards in this section.

(1)(a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be

administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current license or privilege to practice;
2. Have experience in adult education; and
3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider may designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:

(a) Enhances the quality, safety, and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote competence in decision making.

(4) Outcomes for continuing education activities shall be:

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with evidence of a need for the continuing education activity.

(5) The continuing education activity shall reflect planning among the nurse administrator, faculty, and content experts.

(6)(a) The content for each educational activity shall be documented in provider files and shall include the following:

1. The presentation schedule;

2. The name and credentials of the presenter and the topic to be covered;

3. Times for meals and breaks, if applicable;

4. Teaching methods, with corresponding time frames, for each content area; and

5. Learner outcomes.

(b) 1. The content shall be relevant to and consistent with the learner outcomes.

2. The learner outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning outcomes and objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified.

(8) Faculty for continuing education activities shall have:

(a) Documented expertise in the subject matter; and

(b) Experience in presenting to adult learners.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching and learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes;

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy;

(g) Target audience and any prerequisites; and

(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13)(a) A provider shall notify the board in writing within thirty (30) days of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to the pharmacology requirement of 201 KAR 20:215.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

(a) Title, date, and format of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning, learner outcomes, faculty, teaching, and evaluation methods;

(d) Method of verification of participant attendance;

(e) Participant roster including the participant's name, license number, and signature or similar electronic verification;

(f) Summary of participant evaluations;

(g) Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible;

(h) Master copy of certificate of completion awarded; and

(i) Identification of required instructional materials and references.

(16) Participants shall receive a certificate of completion that documents participation with the following information:

(a) Name of participant;

(b) Offering title, date, and the format of presentation;

(c) The provider's name, address, telephone number, approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative; and

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to expected outcomes, effectiveness of teaching methods, and appropriateness of the format of presentation; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity with an action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

(a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;

(b) On the job training;

(c) Orientation;

(d) Basic cardiopulmonary resuscitation; and

(e) Equipment demonstration.

Section 5. (1) The following material is incorporated by

reference:

(a) "Application for Continuing Education Provider Approval", 10/2023[10/2021, Kentucky Board of Nursing]; and

(b) "Application for Continuing Education Provider Renewal", 10/2023[8/2021, Kentucky Board of Nursing].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements to obtain approval from the Kentucky Board of Nursing to be a continuing education (CE) provider.

(b) The necessity of this administrative regulation: This regulation is necessary because of KRS 314.073.

(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 setting standards for the approval of continuing education providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effected administration of statutes setting standards for continuing education providership.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the material incorporated by reference to remove references to continuing education requirements for X-waiver training and implicit bias training.

(b) The necessity of the amendment to this administrative regulation: Changes the Board has proposed in 201 KAR 20:215 that have removed these requirements.

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating the requirements.

(d) How the amendment will assist in the effective administration of the statutes: Continuing education providers will be informed regarding the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nursing continuing education providers, the Board currently has approved approximately 165 continuing education providers.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The removal of questions from the provider applications that are no longer required.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

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

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

(9) TIERING: Is tiering applied? The changes will apply equally, there is no tiering.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.073 and 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS
Board of Physical Therapy
(Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), 367.4082

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) requires the Board of Physical Therapy to promulgate by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards.

(1) A physical therapist and a physical therapist assistant shall:

- (a) Respect the rights and dignity of all patients;
- (b) Practice within the scope of the credential holder's training, expertise, and experience;

(c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) Report to the board any reasonably suspected violation of KRS Chapter 327, KRS 367.4082, or 201 KAR Chapter 22 by a credential holder or applicant within thirty (30) days;

(e) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days;

(f) Comply with the provisions of KRS 367.4082; and

(g) Cooperate with any board investigations.

(2) A physical therapist and a physical therapist assistant shall not:

(a) Verbally or physically abuse a client;

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing;

(c) Engage in sexual misconduct or sexual harassment with a patient:

1. While that person is a patient or client of the physical therapist or physical therapist assistant; or

2. While that person is a patient of a health facility defined by KRS 216B.015 where the physical therapist or physical therapist assistant provides physical therapy services; or

(d) Lie, deceive, or mislead the board, its staff, investigators, or agents.

(3) A physical therapist or physical therapist assistant shall be solely responsible in regard to a relationship with a patient. A patient's initiation of a personal or sexual relationship shall not justify, excuse, or provide a defense for a violation of this section.

(4) Consensual sexual relationships established prior to the initial evaluation will not be subject to portions of this administrative regulation.

Section 2. Standards of Practice for the Physical Therapist.

While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapist:

(a) Complete an evaluation in compliance with subsection (2) of this section and Section 5(2)(a)-(d) of this administrative regulation;

(b) Ensure the evaluation and plan of care from the other physical therapist is current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapist in the medical record; and

(d) Comply with reassessment requirements based on the date of the most recent evaluation;

(4) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year; and

b. During this grace period treatment may continue based upon the previous reassessment or evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the last evaluation or subsequent reassessment; and

(d) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Be responsible for the plan of care until the patient is received by another physical therapist pursuant to subsection (3) of this section;

(8) Provide services that meet or exceed the generally accepted practice of the profession;

(9) Explain the plan of care to the patient and to others designated by the patient;

(10) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and

(11) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not to determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of care established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and inform the supervising physical therapist.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to supervising not more than four (4) physical therapist assistants or supportive personnel; and

(b) Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum of seven (7) work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(25), effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are outside his or her scope of training, education, or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education, or expertise;

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually; and

(b) Documentation of training and competency shall be immediately available for review; and

(5) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013 by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy; and

(j) Directing and being accountable for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation.

(1) The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall include an evaluation and, as required, ongoing documentation and reassessment.

(2) An evaluation in the physical therapy record consists of a written or typed report signed and dated by the physical therapist who is performing the evaluation or who is supervising the physical therapist student performing the evaluation. The evaluation shall include:

(a) Pertinent medical and social history;

(b) Appropriate subjective and objective information;

(c) An assessment, which may indicate problems, interpretations, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(d) The plan of care, which includes the:

1. Treatment; and

2. Measurable goals, including anticipated time frame of achievement.

(3) Ongoing documentation in the physical therapy record shall:

(a) Be completed at least weekly or, if treatment is less than weekly, at each patient visit;

(b) Be written or typed, signed, and dated:

1. By the physical therapist or physical therapist assistant rendering treatment;

2. By the supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist student or physical therapist assistant student; or

3. By the physical therapist student or physical therapist assistant student rendering treatment if countersigned and dated by the supervising physical therapist; and

(c) Include:

1. The treatment rendered since the last evaluation, ongoing documentation, or reassessment;

2. The patient's response to treatment; and

3. Appropriate subjective and objective information.

(4) The reassessment included in the physical therapy record for the revision or reaffirmation of the existing plan of care, or the establishment of a new plan of care shall be written or typed, signed, and dated by a physical therapist.

(a) The reassessment shall be in compliance with Section 2(4) of this administrative regulation.

(b) A reassessment shall include:

1. Subjective, objective, and medical information acquired by the physical therapist, physical therapist student, physical therapist assistant, or physical therapist assistant student;

2. An assessment in compliance with subsection (2)(c) of this section completed by the physical therapist or physical therapist student; and

3. A plan of care in compliance with subsection (2)(d) of this section completed by the physical therapist or physical therapist student.

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist assistant: "PTA";

(c) If written by supportive personnel:

1.a. "PT Aide"; or

b. "Physical Therapy Aide"; or

2. "PT Tech"; and

(d) If written by a student:

1.a. "Physical Therapist Student"; or

b. "PT Student"; or

2.a. "Physical Therapist Assistant Student"; or

b. "PTA Student".

Section 6. Appointment of Fees. Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: July 13, 2023

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2023, at 3:00 p.m. (ET) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to the Board's role in public protection. This amendment helps clarify a portion of the existing regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment to the regulation help clarify a portion of the existing regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment helps clarify a portion of the existing regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds "physical therapy" in front of "diagnosis" to reduce any confusion regarding the diagnosis portion of this regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to the Board's role in public protection as it helps clarify a portion of the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment gives it helps clarify a portion of the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: It helps clarify a portion of the existing regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,515 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not be required to do anything to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It helps clarify a portion of the existing regulation

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact physical therapists and physical therapist assistants credentialed by the board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040; and 327.070.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:005. Definitions for 201 KAR Chapter 36.

RELATES TO: KRS 335.500, 335.535(1)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the definitions used in 201 KAR Chapter 36.

Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course relevant to the practice of professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "Chair"["Chairman"] means the chair[chairman] or vice-chair[vice-chairman] of the board.

(4) "Charge" means a specific allegation contained in a formal complaint, as established in 201 KAR 36:050, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(5) "Client" means:

(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;

(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or

(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(6) "Complaint" means any written allegation of misconduct by a credentialed individual or other person, which might constitute a violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(7) "Complaint screening committee" means a committee that:

(a) Consists of three (3) persons appointed by the chairman of the board and may include the executive director or another staff member; and

(b) Reviews complaints and investigative reports, opens investigations, participates in informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take criminal or civil action.

(8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(9) "Distance counseling" means the practice of professional counseling as defined by KRS 335.500(5) between the professional counselor and the client[patient]:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(10) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, or drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio or video recordings;

(h) Correspondence;

(i) Electronic mail; or

(j) Drawings or blueprints; and[-]

(k) Client treatment documentation.

(11) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the

professional-client relationship between the licensee and the client.

(12) "Face-to-face" means supervision that is in person where the supervisor and supervisee are physically present in the same room or through interactive, simultaneous video and audio media.

(13) "Formal complaint" means a formal administrative pleading authorized by the board, which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(14) [~~"Good moral character"~~] means a licensee or applicant who has not been:

(a) ~~Convicted, in a court of competent jurisdiction, of any crime involving a substantial misrepresentation of any material fact, including any of the following:~~

~~1. Bribery or corrupt influences under KRS Chapter 521;~~

~~2. Forgery or related offenses under KRS Chapter 516;~~

~~3. Business or commercial frauds under KRS Chapter 517;~~

~~4. Perjury or related offenses under KRS Chapter 523;~~

~~5. Abuse of a public office under KRS Chapter 522; or~~

~~6. Miscellaneous crimes affecting businesses, occupations, and professions that have a direct financial or adverse impact on business;~~

(b) ~~Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter 507 or 507A;~~

(c) ~~Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving the following:~~

~~1. Sexual offenses under KRS Chapter 510;~~

~~2. Pornography under KRS Chapter 531;~~

~~3. Theft and related offenses under KRS Chapter 514;~~

~~4. Prostitution offenses under KRS Chapter 529; or~~

~~5. Family offenses under KRS Chapter 530;~~

(d) ~~Convicted, in a court of competent jurisdiction, of any felony involving the following:~~

~~1. Assault or related offenses under KRS Chapter 508;~~

~~2. Kidnapping or related offenses under KRS Chapter 509;~~

~~3. Burglary or related offenses under KRS Chapter 511;~~

~~4. Criminal damage to property under KRS Chapter 512; or~~

~~5. Arson and related offenses under KRS Chapter 513;~~

(e) ~~Found to have a behavioral or substance abuse problem, which may endanger or impair the health, personal safety, or welfare of a client;~~

(f) ~~Found to be a delinquent taxpayer as defined by KRS 131.1817(1)(b);~~

(g) ~~Convicted, in a court of competent jurisdiction, of three (3) or more offenses of driving under the influence or driving while impaired;~~

(h) ~~Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS Chapter 218A;~~

(i) ~~Convicted, in a court of competent jurisdiction, of any criminal offense similar to the convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law of the state where the conviction occurred; or~~

(j) ~~Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a registration, certification, or license issued by the issuing body.]~~

[(45)] "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

[(15)][(46)] "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

[(16)][(47)] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint [or an investigator employed by the Attorney General or the board].

[(17)][(48)] "Professional counselor" means a licensed professional clinical counselor as defined by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

[(18)][(49)] "Program" means an organized learning experience:

(a) Planned and evaluated to meet learning[behavioral] objectives; and

(b) Presented in one (1) session or a series.

[(19)][(20)] "Relevant" means having content applicable to the practice of professional counseling.

(20)(21) "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity who is subject to a charge or formal complaint.

(21)(22) "Scope of practice for professional counseling" means:

(a) The independent practice of counseling encompassing the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, or ethics;

(b) Counseling to promote mental health wellness, which includes the achievement of social, career, and emotional development across the lifespan, as well as preventing and treating mental disorders and providing crisis intervention;

(c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of assessments, tests and appraisals; referral; or the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders;

(d) Counseling that encompasses consultation and program evaluation, program administration within and to schools and organizations, and training and supervision of interns, trainees, and pre-licensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision; or

(e) The functions or practices that are within the professional counselor's training or education.

(22) "Student" means an individual taking coursework in a counselor education program governed by a team of credentialed instructors who will maintain a student and professor relationship during student's enrollment period.

(23) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(24) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(25) "Supervisor" means a licensed professional clinical counselor supervisor~~member of a mental health or behavioral services profession listed in 201 KAR 36:065~~ who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

(26) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with 201 KAR 36:060, Section 2.

(27) "Testing and assessment services" means an educational, mental health, clinical, and career assessment to gather information regarding the client for a variety of purposes, including client decision making, treatment planning, and forensic proceedings. Assessment may include both qualitative and quantitative methodologies.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMn1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This

hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 36

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 36.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 36

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 36.

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

(a) How the amendment will change this existing administrative regulation: The amendment will make terms gender neutral, clarify terminology, add items to the definition of "document", strike the definition of "good moral character", add the definition of "student" and clarify the definition of "supervisor".

(b) The necessity of the amendment to this administrative regulation is to clarify the definitions and allow for the common usage of "good moral character" when determining the fitness of an applicant for licensure, renewal or reinstatement and unrestricted usage of the term as opposed to the current restriction of applying the term to criminal behavior only.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make needed clarification to the definitions for regulations and allow the board to use the term "good moral character" as it was intended for purposes of determining an applicant's eligibility for the profession.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by the renewal, late renewal, and reinstatement fees. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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: There are no actions needed to be taken for compliance of this administrative regulation.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with the 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.

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

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

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 (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 13B, 194A.540, 210.366, 335.500-335.599
STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3), (6), and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his licensee. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours.

(1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure, as required by KRS 194A.540. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement.

(4) A person holding a license shall complete a minimum of six (6) hours of continuing education in a course in suicide assessment, treatment, and management within the first three (3) years[year] of initial licensure and every six (6) years of licensure thereafter as required by KRS 210.366. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement.

~~[(a) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management within the first year of licensure if the counselor:~~

~~1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or~~

~~2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.~~

~~(b) A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the counselor satisfies one (1) of the following at least once per year during the six (6) year periodic requirement:~~

~~1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;~~

~~2. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and intervention; or~~

~~3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention.~~

~~(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance~~

with Section 2 of this administrative regulation.

(d) ~~An individual asserting an exemption of the suicide assessment, treatment, and management course shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 5(3) of this administrative regulation shall be sufficient to establish the exemption.~~

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, every three (3) years of licensure. A person holding a license who teaches the board-approved training shall be deemed to have completed this requirement. [A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course that includes KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period; or

(b) Teaches a continuing education course on KRS 335.500 to 335.599 and 201 KAR Chapter 36 during the three (3) year period.]

(6) All mandatory trainings on domestic violence; suicide assessment, treatment and management; and Kentucky law shall be approved by the Board and any program offered by a general continuing education provider listed in Section 2(1)(a) shall be submitted for approval to the board.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. They may be earned by completing any of the educational activities as established in this section.

(1) Programs not requiring board review and approval.

[(a)] A general continuing education program from any of the following providers shall be approved without further review by the board if it is:

(a)[1-] Sponsored or approved by:

1.[a.] The American Counseling Association, or any of its affiliated branches or divisions;

2.[b.] The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

[c. The American School Counselor Association or any of its affiliated state chapters;]

3.[d.] The National Board for Certified Counselors; or

4.[e.] A state counseling licensure board; or

(b)[2-] An academic course offered by a CACREP-accredited[an accredited post-secondary institution directly related to professional counseling program[or counseling psychology]. Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for each one (1) academic credit hour.

[(b)] A continuing education program not requiring board review and approval shall comply with the requirements of subsection (3) of this section and Section 4 of this administrative regulation.]

(2) [Programs requiring board review and approval. For approval purposes, the board shall review the following types of programs to determine relevancy:

(a) A program, approved by the board, of a service provider, including a home study course or in-service training provided by another organization or educational institution;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) An article authored by the licensee that was published in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(3)(a)] Supervision training under 201 KAR 36:065, Section 1(3)[,] shall be pre-approved by the board, and presented by the board or an instructor who is licensed by the board as a Licensed

Professional Clinical Counselor – Supervisor (LPCC-S).

(3)[(b)] The continuing education program on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, shall be presented by the board, an instructor who is licensed by the board, or an attorney who demonstrates knowledge of KRS 335.500 to 335.599 and 201 KAR Chapter 36 in the Continuing Education Program Application.

[(4)] Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for every one (1) academic credit hour.

(5) ~~A general education course, whether elective or used to meet degree requirements, shall not be acceptable as continuing education credit.~~

Section 3. Procedures for Approval of Continuing Education Programs by a Licensee. In order to submit the course to the board for approval, the following shall be submitted:

(1) A published course or similar description;

(2) The names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks, which also states[-The agenda shall state] the specific time when each topic of the program is being presented;

(4) The number of continuing education hours requested;

(5) An official certificate of completion or college transcript from the sponsoring agency or college;

(6) The Continuing Education Program Application; [and]

(7) ~~The~~[If a provider is seeking approval for a continuing education course, an] application review fee set forth in 201 KAR 36:020 Section 3; and[of twenty (20) dollars.]-

(8) A copy of the evaluation.

Section 4. Procedures for Preapproval of Continuing Education Programs by Providers.~~[Sponsors and Programs.]-~~

(1) ~~[Sponsor approval.]-~~Any provider[entity] seeking to obtain approval[:]

(a)] of a continuing education program ~~[prior to its offering.]-~~shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the following information:

(a) A published course or similar description;

(b) The names and qualifications of the instructors;

(c) A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks, which states the specific time when each topic of the program is being presented;

(d) The number of continuing education hours requested;

(e) An official certificate of completion or college transcript from the sponsoring agency or college;

(f) The Continuing Education Program Application;

(g) A copy of the evaluation; and

(h) The application review fee set forth in 201 KAR 36:020 Section 3,[required in Section 3 of this administrative regulation on an annual basis for each program; or

(b) As a prior-authorized continuing education provider under Section 2(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs that meet or exceed all the requirements set forth in Section 1(2) of this administrative regulation; and

2. Does not exclude a licensee from its programs.]-

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of professional counseling;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of a Licensee.

(1) During the licensure renewal period, up to fifteen (15)

percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his or her own continuing education needs and seek activities that meet those needs;

(c) Seek ways to integrate new knowledge, skills, and attitudes;

(d) Select approved activities by which to earn continuing education hours; ~~or~~

~~2. Submit to the board a request for approval for continuing education activities not approved as required in Section 2(2) of this administrative regulation;~~

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate; or

(c) Affidavit signed by the instructor; ~~or~~

~~(d) Receipt for the fee paid to the sponsor.~~

(4) Compliance with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.540(1)(b) and shall result in sanctions in accordance with KRS 335.540(1).

~~[(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.]~~

Section 6. Responsibilities and Reporting Requirements of Providers and Sponsors.

(1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(3) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 7. Board to Approve Continuing Education Hours; Appeal of Denial.

(1) If an application for approval of continuing education hours is denied, in whole or part, the continuing education course provider or licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 8. Waiver or Extensions of Continuing Education.

(1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; and

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or

extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of License.

(1)(a) Except as provided by paragraph (b) of this subsection, a person requesting reinstatement or reactivation of a license shall submit evidence of ten (10) hours of continuing education completed within one (1) year prior to~~ef~~ the filing of the application for reinstatement or reactivation.

(b) Upon request by the applicant, the board may permit the applicant to resume practice if ten (10) hours of continuing education is obtained within ninety (90) days of the date on which the applicant is approved to resume practice.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Hours required to satisfy the continuing education requirement shall be completed on or before the renewal date established in 201 KAR 36:075, Section 1. Failure to complete the continuing education requirement in Section 1 of this administrative regulation by the renewal date of a license shall require the applicant to submit a reinstatement application in accordance with 201 KAR 36:075.

Section 11. Incorporation by Reference.

(1) "Continuing Education Course~~[Program]~~ Application, DPL-LPC-01[KBLPC-007]", July 2023~~[June 2015 edition]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street~~[944 Leawood Drive]~~, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at lpc.ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing, Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnI1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500

Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the continuing education requirements for a credential holder to keep them current and protect the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice as required by the statutes and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

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

(a) How the amendment will change this existing administrative regulation: The amendments mandatory training on domestic violence, suicide and Kentucky law which will now require such training be Board-approved; eliminates exemptions with an exception for teachers of the board-approved training; revised methods of acquiring continuing education hours, including the elimination of the automatic approval of continuing education sponsored or approved by the American School Counselor Association or its affiliates due to its move from the American Counseling Association (ACA), and the inclusion of academic courses offered by a CACREP-accredited counseling program; simplification of complex academic credit calculations which were difficult to calculate and monitor; now requires that training for supervisors be presented by the Board or an instructor licensed by the board as an LPCC-S; eliminates use of course credits for continuing education to ensure there is no double-dipping by attempted usage of any of the 60 hours required for licensure for mandated additional CE requirements and thus eliminating the exemptions and options that cluttered the regulation and confused licensees; sets forth specific information needed for CE review for pre-approval, including the evaluation; and makes some general housekeeping and clerical changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure appropriate and accurate training for licensees, including mandatory trainings and annual general requirements; and to eliminate confusion, double-dipping, and other complex issues resulting from the prior complicated requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder, as well as KRS 210.366 on suicide assessment, treatment, and management training, KRS 194A.540 on domestic violence training, KRS 335.500 to .59 and 201 KAR Chapter 36 on laws regulating professional counseling. (d) How the amendment will assist in the effective administration of the statutes: The revisions add clarity, reduces confusion, and will provide better direction to licensees so they are able to meet the educational requirements; and ensure quality and consistency in educational programming so licensees are accurately and adequately trained.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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 licensee will still be required to obtain continuing education annually for compliance. Program sponsors will have additional steps to take for pre-approval of programming by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment ensures compliance with continuing education requirements relating to suicide assessment, treatment, and management, in a more consistent manner, and ensure domestic violence and Kentucky law programming is thorough and up-to-date. Other benefits include elimination of most exemptions and assurance that training is adequate training, and a reduction in complex educational calculation formulas.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in any fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.366, 335.515(3), (6), 335.535(8).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: 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.

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

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

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 (+/-):

Other Explanation: N/A

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients.

(1) A professional counselor shall:

(a) Advance and protect the welfare of the counselor's client;

(b) Respect the rights of a person seeking the counselor's assistance; and

(c) Make efforts to ensure that the counselor's services are used appropriately.

(2) A professional counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;

(b) Exploit the trust and dependency of a client;

(c)

1. Engage in a dual relationship with a client that might:

a. Impair professional judgment;

b. Incur a risk of exploitation of the client; or

c. Otherwise violate a provision of this administrative regulation.

2. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:

a. Written informed consent by the client of the client's understanding of the general prohibitions against dual relationships;

b. Peer consultation by a licensed professional; and

c. Proper documentation of the precautions taken by the professional counselor.

(d) Engage in a sexual, romantic interaction, or an intimate relationship with a current client or with a former client for five (5) years following the termination of counseling. This prohibition shall apply to both in-person and electronic interactions or relationships;

(e) Use the counselor's professional relationship with a client to further his or her own interests;

(f) Continue therapeutic relationships unless it is clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling to provide professional help for appropriate reasons that include a threat or risk of harm to the professional counselor, a failure to pay for services previously provided, or a severe injury or medical illness suffered by the professional counselor;

(h) Abandon or neglect a client in treatment without making arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of the counselor's client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of the counselor's competence.

Section 2. Professional Counselors' Obligations and Duties.

(1) A professional counselor shall safeguard and maintain documentation necessary for rendering professional services.

(2) Regardless of the medium, a professional counselor shall include sufficient and timely documentation to facilitate the delivery and continuity of services. The documentation shall accurately reflect client progress and services provided.

(3) If an amendment is made to a record or documentation, a professional counselor shall properly note the amendment in the client's record.

(4) A professional counselor and the client shall work jointly in devising a counseling plan that offers a reasonable promise of success and is consistent with the abilities, temperament, developmental level, and circumstances of the client.

(5) A professional counselor and the client shall regularly review and revise the client's counseling plan to assess the plan's continued viability and effectiveness, respecting the client's freedom of choice.

(6) A professional counselor shall review in writing and verbally with a client the rights and responsibilities of a professional counselor and a client.

(7) A professional counselor shall provide adequate information about the client's freedom of choice, the counseling process, and the professional counselor so a client may make an educated decision whether to enter into or remain in a counseling relationship.

(8) Informed consent shall be an ongoing part of the counseling process, and a professional counselor shall document discussions of informed consent throughout the counseling relationship.

(9) A professional counselor shall explicitly explain to a client the nature of all services provided. The information shall include the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, relevant experience, and approach to counseling; continuation of services upon the incapacitation or death of the counselor; the role of technology; and other pertinent information.

(10) A professional counselor shall take steps to ensure that each client understands the implications of diagnosis and the intended use of tests and reports.

(11) A professional counselor shall inform a client about fees and billing arrangements, including procedures for nonpayment of fees.

(12) A professional counselor shall communicate information in ways that are both developmentally and culturally appropriate.

(13) A professional counselor shall use clear and understandable language when discussing issues related to informed consent.

(14) When counseling a minor, an incapacitated adult, or other person unable to give voluntary consent, a professional counselor shall seek the assent of the client to services and include the client in decision making as appropriate.

(15) A professional counselor shall recognize the need to balance the ethical rights of each client to make choices, the client's capacity to give consent or assent to receive services, and parental

or familial legal rights and responsibilities to protect the client and make decisions on the client's behalf.

(16) A professional counselor shall discuss the required limitations to confidentiality when working with each client who has been mandated for counseling services.

(17) A professional counselor shall explain what type of information and with whom that information is shared prior to the beginning of counseling. The client may choose to refuse services. In this case, a professional counselor shall, to the best of the counselor's ability, discuss with the client the potential consequences of refusing counseling services.

(18) When a professional counselor learns that a client is in a professional relationship with another mental health professional, the professional counselor shall request release from the client to inform the other mental health professional and strive to establish a positive and collaborative professional relationship.

(19) A professional counselor shall avoid harming a client, supervisee, trainee, or research participant and shall minimize or remedy unavoidable or unanticipated harm.

(20) A professional counselor shall be aware of and avoid imposing the professional counselor's values, attitudes, beliefs, or behaviors on a client.

(21) A professional counselor shall respect the diversity of each client, trainee, and research participant and seek training in areas in which the counselor is at risk of imposing the counselor's values onto a client, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(22) A professional counselor shall refrain from referring a prospective and current client based solely on the counselor's personally held values, attitudes, beliefs, and behaviors.

(23) A professional counselor shall seek training in areas in which a professional counselor is at risk of imposing his or her values onto a client, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(24) A professional counselor shall not engage in a counseling relationship with a person with whom the professional counselor has had a previous sexual or romantic relationship.

(25) A professional counselor shall not engage in a counseling relationship with a friend or a family member with whom the professional counselor has an inability to remain objective.

(26) A professional counselor shall consider the risks and benefits of accepting a client with whom the professional counselor has had a previous relationship. This potential client may include an individual with whom the counselor has had a casual, distant, or past relationship. Examples include mutual or past membership in a professional association, organization, or community.

(27) When a professional counselor accepts a client with whom the professional counselor has had a previous relationship, the professional counselor shall take the appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

(28) A professional counselor shall consider the risks and benefits of extending current counseling relationships beyond conventional parameters. Examples of extending these boundaries of the counseling relationship include attending a client's wedding or commitment ceremony or graduation; purchasing a service or product provided by a client, accepting unrestricted bartering; and visiting a client's ill family member in the hospital.

(29) A professional counselor shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that the client's or supervisee's judgment is not impaired and no harm occurs.

(30) When a professional counselor changes a role from the original or most recent contracted relationship, a professional counselor shall obtain informed consent from the client and explain the client's right to refuse services related to the change.

(31) A professional counselor shall fully inform a client of any anticipated consequences including financial, legal, personal, or therapeutic if the professional counselor role changes. Examples of role changes include changing from:

(a) Individual to relationship or family counseling, or vice versa;

(b) An evaluative role to a therapeutic role, or vice versa; or

(c) A counselor to a mediator role, or vice versa.

(32) A professional counselor shall not enter into non-professional relationships with a former client, the client's romantic partners, or the client's family members when the interaction is potentially harmful to the client. This applies to both in-person and electronic interactions or relationships.

(33) When a professional counselor agrees to provide counseling services to two (2) or more persons who have a relationship, the professional counselor shall clarify at the outset which person or persons are the client or clients and the nature of the relationships the professional counselor shall have with each involved person. If it becomes apparent that the professional counselor may be called upon to perform potentially conflicting roles, the professional counselor shall clarify, adjust, or withdraw from the conflicting roles.

(34) A professional counselor shall screen prospective group counseling or therapy participants.

(35) To the extent possible, a professional counselor shall select members whose needs and goals are compatible with the goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

(36) In a group setting, a professional counselor shall take precautions to protect clients from physical, emotional, or psychological trauma.

(37) A professional counselor may barter only if the client requests and the bartering for services does not result in exploitation or harm to the client.

(38) A professional counselor shall consider the cultural implications of bartering for services and discuss relevant concerns with the client and document any agreed upon bartering agreements in a written contract.

(39) A professional counselor shall understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and gratitude. When determining whether to accept a gift from a client, a professional counselor shall take into account the therapeutic relationship, the monetary value of the gift, the client's motivation for giving the gift, and the counselor's motivation for wanting to accept or decline the gift.

(40) If a professional counselor lacks the competence to be of professional assistance to a client, the professional counselor shall not enter or continue a counseling relationship.

(41) A professional counselor shall terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling.

(42) A professional counselor may terminate counseling when in jeopardy of harm by the client or by another person with whom the client has a relationship, or when a client does not pay fees as agreed upon.

(43) A professional counselor shall provide pretermination counseling and recommend other service providers when necessary, unless counseling was terminated in accordance with subsection (42) of this section.

Section 3. Evaluation, Assessment, and Interpretation. (1) A professional counselor shall not misuse assessment results or interpretations, and a professional counselor shall take steps to prevent others from misusing the information provided.

(2) A professional counselor shall respect a client's right to know the results, the interpretations made, and the basis for the professional counselor's conclusions and recommendations.

(3) A professional counselor shall use only those testing and assessment services for which the professional counselor has been trained and is competent. A professional counselor using technology-assisted test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using its technology-based application. A professional counselor shall take measures to ensure the proper use of assessment techniques by persons under the counselor's supervision.

(4) A professional counselor shall be responsible for the application, scoring, interpretation, and use of assessment

instruments relevant to the needs of the client, whether the counselor scores and interprets the assessments himself or herself or uses technology or other services.

(5) A professional counselor shall be responsible for decisions involving individuals or policies that are based on assessment results and have a thorough understanding of psychometrics.

(6) Prior to an assessment, a professional counselor shall explain the nature and purposes of the assessment and the specific use of results by potential recipients. The explanation shall be given in terms and language that the client or other legally authorized person acting on behalf of the client would understand.

(7) A professional counselor shall consider the client's welfare, explicit understandings, and prior agreements in determining who receives the assessment results.

(8) A professional counselor shall include accurate interpretations with any release of individual or group assessment results.

(9) A professional counselor shall release assessment data in which the client is identified only with the consent of the client or the client's legal representative. Data shall be released only to persons recognized by the professional counselor as qualified to interpret the data.

(10) A professional counselor shall take special care to provide proper diagnosis of mental disorders. Assessment techniques, including personal interviews, used to determine client care which includes locus of treatment, type of treatment, recommended follow-up, shall be tailored to the client and appropriately used.

(11) A professional counselor may refrain from making a diagnosis if the professional counselor believes that the diagnosis would cause harm to the client or others. A professional counselor shall carefully consider both the positive and negative implications of a diagnosis.

(12) If a client is referred to a third party for assessment, the professional counselor shall provide specific referral questions and sufficient objective data about the client to ensure that appropriate assessment instruments are utilized.

(13) When assessments are not administered under standard conditions, as may be necessary to accommodate clients with disabilities, or when unusual behavior or irregularities occur during the administration, those conditions shall be noted in the counselor's interpretation, and the results may be designated as invalid or of questionable validity.

(14) A professional counselor shall provide an appropriate environment for the administration of assessments. The appropriate environment shall include privacy, comfort, and freedom from distraction.

(15) A professional counselor shall ensure that technologically administered assessments function properly and provide a client with accurate results.

(16) Unless the assessment instrument is designed, intended, and validated for self-administration or scoring, a professional counselor shall not permit unsupervised use.

(17) A professional counselor shall select and use with caution assessment techniques based on populations other than that of the client. A professional counselor shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality, sexual orientation, and socioeconomic status on test administration and interpretation, and place test results in proper perspective with other relevant factors, such as the purpose of the test as it relates to the specific mental impairment, disability, or age group.

(18) A professional counselor shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to the use of those procedures.

(19) A professional counselor shall maintain the integrity and security of tests and assessments consistent with legal and contractual obligations. A professional counselor shall not appropriate, reproduce, or modify published assessments or parts thereof without acknowledgment and permission from the publisher.

(20) A professional counselor shall use established scientific procedures, relevant standards, and current professional knowledge for assessment design in the development, publication, and

utilization of assessment techniques.

(21) When providing forensic evaluations, the primary obligation of a professional counselor shall be to remain unbiased and produce objective findings that may be substantiated based on information and techniques appropriate to the evaluation, which may include examination of the individual or review of records.

(22) A professional counselor shall form his or her professional opinions based on the counselor's professional knowledge and expertise that may be supported by the data gathered in evaluations.

(23) A professional counselor shall define the limits of the counselor's reports or testimony, especially when an examination of the individual has not been conducted.

(24)(a) A professional counselor shall inform an individual who is the subject of a forensic evaluation, in writing, that the relationship:

1. Is for the purposes of an evaluation;
2. Is not therapeutic in nature; and
3. Identifies the entities or individuals who will receive the evaluation report.

(b) A professional counselor who performs forensic evaluations shall obtain written consent from an individual being evaluated or from the individual's legal representative unless a court orders evaluations to be conducted without the written consent of the individual being evaluated or the individual's parent or guardian.

(25) A professional counselor shall not evaluate a current or former client, a client's romantic partners, or a client's family members forensically.

Section 4. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) A professional counselor shall protect the confidential information of each prospective, current, and former client.

(3) A professional counselor shall disclose information only with the appropriate consent or with sound legal or ethical justifications under subsection (4) of this section.

(4) A professional counselor shall not disclose a client confidence except:

(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant; or

(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless the counselor has obtained a waiver from that individual family member. If the family member is a minor, a custodial parent or legal guardian may provide a waiver.

(5) A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (4)(d) of this section; or

(b) Steps have been taken to protect client identity and confidentiality.

(6) A professional counselor shall ensure that client records and documentation kept in any medium are:

(a) Secure so that only authorized persons have access; and

(b) Disposed of so confidentiality is maintained.

(7)(a) A professional counselor shall keep information confidential except if disclosure is required to protect a client or identified others from serious and foreseeable harm or if legal requirements demand that confidential information be revealed.

(b) A professional counselor may consult with other professionals when in doubt as to the validity of an exception.

(8) A professional counselor who provides services to a terminally-ill individual who is considering hastening the individual's death may maintain confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from professional and legal parties.

(9)(a) A professional counselor shall adhere to relevant state laws concerning disclosure about disease status.

(b) When a client discloses that the client has a disease commonly known to be both communicable and life threatening, a

professional counselor shall be justified in disclosing information to identifiable third parties, if the parties are known to be at serious and foreseeable risk of contracting the disease.

(c) Prior to making a disclosure, a professional counselor shall assess the intent of the client to inform the third party about the client's disease or to engage in any behaviors that may be harmful to an identifiable third party.

(10) A professional counselor shall make every effort to ensure that privacy and confidentiality of a client is maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

(11) When services provided to a client involve participation by an interdisciplinary or treatment team, a professional counselor shall inform the client of the team's existence and composition, information being shared, and the purposes of sharing the information.

(12) A professional counselor shall ensure the confidentiality of all information transmitted through the use of any medium.

(13) A professional counselor shall protect the confidentiality of a deceased client, consistent with legal requirements and the documented preferences of the client.

(14) In group work, a professional counselor shall clearly explain the importance and parameters of confidentiality for the specific group.

(15) In couples and family counseling, a professional counselor shall clearly define who is considered the client, and discuss expectations and limitations of confidentiality. A professional counselor shall obtain an agreement and document in writing the agreement among all involved parties regarding the confidentiality of information. In the absence of an agreement to the contrary, the couple or family shall be considered to be the client.

(16) When counseling a minor client or an adult client who lacks the capacity to give voluntary informed consent, a professional counselor shall protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

(17) A professional counselor shall inform parents and legal guardians about the role of the professional counselor and the confidential nature of the counseling relationship, consistent with current legal and custodial arrangements. A professional counselor shall work to establish, as appropriate, collaborative relationships with parents or guardians to best serve the client.

(18) When counseling a minor client or an adult client who lacks the capacity to give voluntary consent to release confidential information, a professional counselor shall obtain written permission from a third party to disclose information. In these instances, a professional counselor shall inform the client consistent with his or her level of understanding and take measures to safeguard client confidentiality.

(19) A professional counselor shall obtain written permission from a client prior to allowing any person to observe counseling sessions, review session transcripts, or view recordings of sessions with supervisors, faculty, peers, or others within the training environment.

(20)(a) A professional counselor shall provide reasonable access to records and copies of records when requested by a competent client.

(b) A competent client shall include an adult who is able to sign for services, and except for in cases of an emergency, is without the need of a guardian to sign for him or her.

(c) The board may provide reasonable access to records and copies of records to a guardian if a guardian is signing and acting on behalf of an incompetent client.

(d) An incompetent client means a client with chronic issues mentally, such as mental retardation, or acute issues, due to mental illness or drug use. An incompetent client includes a client who is not alert and oriented as to a person, place, time, or situation.

(21) A professional counselor shall limit the access of a client to a client's records, or portions of a client's records, only when there is compelling evidence that the access would cause harm to the client. The determination of harm made by the professional counselor includes situations of when the client is not competent, or if although a competent client considering all of the circumstances it

would still be adverse to the client's welfare to release all or a portion of his or her records.

(22) A professional counselor shall document the request of a client and the rationale for withholding some or all of the records in the files of the client.

(23) In situations involving multiple clients, a professional counselor shall provide an individual client with only those parts of records that relate directly to that client and do not include confidential information related to any other client.

(24) When a client requests access to the client's records, a professional counselor shall provide assistance and consultation in interpreting counseling records.

(25) Unless exceptions to confidentiality exist, a professional counselor shall obtain written permission from each client to disclose or transfer records to legitimate third parties.

(26) A professional counselor shall store records following termination of services to ensure reasonable future access, maintain records in accordance with federal and state laws and statutes such as licensure laws and policies governing records, and dispose of client records and other sensitive materials in a manner that protects client confidentiality for a period of not less than seven (7) years after the last date that services were rendered.

(27) Information shared in a consulting relationship shall be discussed for professional purposes only. Written and oral reports by the counselor shall present only data germane to the purposes of the consultation, and every effort shall be made to protect client identity and to avoid undue invasion of privacy.

(28) When consulting with colleagues, a professional counselor shall not disclose confidential information that reasonably may lead to the identification of a client or other person or organization with whom the professional counselor has a confidential relationship unless the professional counselor has obtained the prior consent of the person or organization or the disclosure is unavoidable. A professional counselor shall disclose information only to the extent necessary to achieve the purposes of the consultation.

Section 5. Professional Competence and Integrity. (1) A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

(a)1. Upon conviction of a felony, or a misdemeanor related to the counselor's practice as a professional counselor; and

2. Conviction shall include adjudication based on:

a. A plea of no contest or an Alford Plea; or

b. The suspension or deferral of a sentence;

(b) If the counselor's license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(c) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances that could reasonably be expected to negatively impact the practice of professional counseling; or

(d) If the counselor has failed to cooperate with the board by not:

1. Furnishing in writing a complete explanation to a complaint filed with the board;

2. Appearing before the board at the time and place designated; or

3. Properly responding to subpoenas issued by the board.

(2) A professional counselor shall practice only within the boundaries of their competence, based on the counselor's education, training, supervised experience, state and national professional credentials, and professional experience.

(3) While developing skills in new specialty areas, a professional counselor shall take steps to ensure the competence of the counselor's work and protect others from possible harm.

(4) A professional counselor shall monitor oneself for signs of impairment from his or her own physical, mental, or emotional problems and refrain from offering or providing professional services when impaired. A professional counselor shall seek assistance for problems that reach the level of professional impairment, and, if necessary, the professional counselor shall limit, suspend, or terminate his or her professional responsibilities until it is determined

that he or she may safely resume professional counseling.

(5) When advertising or otherwise representing services to the public, a professional counselor shall identify the professional counselor's credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

(6) A professional counselor shall accurately represent the professional counselor's qualifications.

(7) A professional counselor shall clearly distinguish between paid and volunteer work experience and accurately describe the professional counselor's continuing education and specialized training.

(8) A professional counselor shall correct any known misrepresentations of his or her qualifications by another.

(9) A professional counselor shall truthfully represent the qualifications of a professional colleague.

(10) A professional counselor shall only claim licenses or certifications that are current and in good standing.

(11) A professional counselor shall clearly differentiate between earned and honorary degrees.

(12) A professional counselor shall clearly state the professional counselor's highest earned degree in counseling or a closely related field.

(13) A professional counselor shall not imply doctoral-level competence when possessing a master's degree in counseling or a related field by referring to oneself as a doctor in a counseling context when the counselor's doctorate is not in counseling or a related field.

(14) A professional counselor shall not use all but dissertation (ABD) or other similar terms to imply competency.

(15) A professional counselor shall not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual orientation, marital or partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.

(16) A professional counselor shall not engage in or condone sexual harassment. Sexual harassment may consist of a single intense or severe act, or multiple persistent or pervasive acts.

(17) A professional counselor shall accurately and objectively report the professional counselor's professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

(18) When a professional counselor provides advice or comment by means of public lectures, demonstrations, radio or television programs, recordings, technology-based applications, printed articles, mailed material, or other media, the professional counselor shall take precautions to ensure that:

(a) The statements are based on appropriate professional counseling literature and practice; and

(b) The recipients of the information are not encouraged to infer that a professional counseling relationship has been established.

(19) When providing services, a professional counselor shall only use techniques, procedures, or modalities that are grounded in theory or have an empirical or scientific foundation.

(20) When a professional counselor uses a developing or innovative technique, procedure, or modality, the professional counselor shall explain the potential risks, benefits, and ethical considerations of using the technique, procedure, or modality.

(21) A professional counselor shall minimize any potential risks or harm when using these techniques, procedures, or modalities.

(22) A professional counselor shall not provide a professional counseling service if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness that impairs delivery of the services.

(23) A professional counselor shall not possess or distribute the board's examination material without authorization by the board.

(24) A professional counselor shall not interfere with a board investigation of a professional counselor through a willful means including:

(a) Misrepresentation of a fact;

(b) Undue influence of a witness;

(c) A threat toward a person; or

(d) Harassing communication toward a person.

(25) A professional counselor shall not verbally abuse, harass, physically threaten, or assault a client, supervisee, employee, board member, or agent of the board.

(26) A professional counselor shall submit a written report to the board, within fifteen (15) days of any of the following events:

(a) A conviction of any crime, including an adjudication based on a plea of no contest or Alford Plea, except for minor traffic offenses;

(b) The entry of an order of protection following notice and an opportunity to be heard pursuant to KRS Chapter 403 or KRS Chapter 456;

(c) Any substantiated act of child abuse and neglect pursuant to KRS Chapter 620, or adult abuse, neglect, and exploitation pursuant to KRS Chapter 209; or

(d) The entry of a pretrial diversion agreement in any court in this state, or another state, where either a criminal charge or sentencing is deferred pending completion of the diversion agreement.

(27)[(26)] A professional counselor shall not lack good moral character.

Section 6. Distance Counseling, Technology, and Social Media.

(1) A professional counselor who engages in the use of distance counseling, technology, or social media shall develop knowledge and skills regarding related technical, ethical, and legal considerations.

(2) Each client shall have the freedom to choose whether to use distance counseling, social media, or technology within the counseling process.

(3) In addition to the information documented in an informed consent for face-to-face counseling as required under Sections 1(2)(c)2.a. and 2(8) of this administrative regulation, the following issues unique to the use of distance counseling, technology, or social media shall be discussed, and verification of the discussion shall be documented in the informed consent form:

(a) Distance counseling credentials, physical location of practice, and contact information;

(b) Risks and benefits of engaging in the use of distance counseling, technology, or social media;

(c) Possibility of technology failure and alternate methods of service delivery;

(d) Anticipated response time;

(e) Emergency procedures to follow when the counselor is not available;

(f) Time zone differences;

(g) Cultural or language differences that may affect delivery of services;

(h) Possible denial of insurance benefits; and

(i) Social media policy.

(4) A professional counselor shall inform a client, in writing, of any breach of the confidentiality of electronic records and transmissions within seventy-two (72) hours of knowledge of the breach.

(5) A professional counselor shall inform a client about the inherent limits of confidentiality when using technology.

(6) A professional counselor shall inform a client of authorized or unauthorized access to information disclosed using this medium in the counseling process.

(7) A professional counselor shall use current encryption standards within the counselor's Web sites or technology-based communications that meet applicable legal requirements for information that is required to be kept confidential. A professional counselor shall take precautions to ensure the confidentiality of information transmitted through any electronic means when the information is required to be kept confidential.

(8) A professional counselor who engages in the use of distance counseling, technology, or social media to interact with a client shall take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification shall include using code words, numbers, graphics, or other nondescript identifiers.

(9) A professional counselor shall inform a client of the benefits

and limitations of using technology applications in the provision of counseling services. The technologies may include computer hardware or software, telephones and applications, social media and Internet-based applications and other audio or video communication, or data storage devices or media.

(10) A professional counselor shall discuss and establish professional boundaries with each client regarding the appropriate use or application of technology and the limitations of its use within the counseling relationship, which include the lack of confidentiality and times when not appropriate to use.

(11) When providing technology-assisted services, a professional counselor shall make efforts to determine that each client is intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. A professional counselor shall verify that each client understands the purpose and operation of technology applications and follow up with each client to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

(12) When distance counseling services are found as ineffective by the counselor or client, a professional counselor shall consider delivering services in the same physical space. If a professional counselor is unable to provide services in the same physical space (e.g., lives in another state), the professional counselor shall assist the client in identifying appropriate services.

(13) A professional counselor shall provide information to each client regarding reasonable access to pertinent applications when providing technology-assisted services.

(14) A professional counselor shall consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may affect the counseling process. A professional counselor shall educate a client on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

(15) A professional counselor shall inform a client on how records are maintained electronically. This includes the type of encryption and security assigned to the records, and for how long archival storage of transaction records is maintained.

(16) A professional counselor who offers distance counseling services or maintains a professional Web site that provides electronic links to relevant licensure and professional certification boards to protect consumer and client rights and address ethical concerns shall ensure that distance counseling services or electronic links are working and are professionally appropriate.

(17) A professional counselor shall clearly explain to a client, as part of the informed consent procedure, the benefits, limitations, and boundaries of the use of social media.

(18) A professional counselor shall avoid disclosing confidential information through public social media.

Section 7. Responsibility to Supervisor's Student or Supervisee.

(1) A professional clinical counselor supervisor, including a counselor who is acting as a faculty supervisor in the school setting as authorized by KRS 335.505(4), shall monitor the services provided by a supervisee.

(2) A professional counselor shall:

(a) Be aware of the counselor's influential position with respect to a student or supervisee;

(b) Avoid exploiting the trust and dependency of a student or supervisee;

(c) Try to avoid a social, business, personal, or other dual relationship that could:

1. Impair professional judgment; and
2. Increase the risk of exploitation;

(d) Take precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(e) Not provide counseling to a:

1. Student;
2. Employee; or
3. Supervisee;

(f) Not engage in sexual intimacy or contact with a:

1. Student; or
2. Supervisee;

(g) Not permit a student or supervisee to perform or represent himself or herself as competent to perform a professional service beyond his or her level of:

1. Training;
2. Experience; or
3. Competence; and

(h) Not disclose the confidence of a student or supervisee unless:

1. Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated by law;

2. It is necessary to prevent a clear and immediate danger to a person;

3. During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;

4. In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the student or supervisee; or

5. In accordance with the terms of a written informed consent agreement.

(3) A professional clinical counselor supervisor shall monitor client welfare and supervisee performance and professional development. To fulfill these obligations, a professional clinical counselor supervisor shall meet regularly with each supervisee to review the supervisee's work and help the supervisee become prepared to serve a range of diverse clients as required by 201 KAR 36:060.

(4) A professional clinical counselor supervisor shall work to ensure that a supervisee communicates the supervisee's qualifications to render services to a client.

(5) A professional clinical counselor supervisor shall make each supervisee aware of client rights, including the protection of client privacy and confidentiality in the counseling relationship. A supervisee shall provide the supervisee's clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. A supervisee shall make clients aware of who will have access to records of the counseling relationship and how these records will be stored, transmitted, or otherwise reviewed.

(6) A professional clinical counselor supervisor shall not engage in a sexual or romantic interaction or relationship with a current supervisee. This prohibition shall apply to both in-person and electronic interactions or relationships.

(7) A professional clinical counselor supervisor shall not engage in supervisory relationships with individuals with whom the counselor has an inability to remain objective.

(8) A professional clinical counselor supervisor shall establish and communicate to a supervisee procedures for contacting the supervisor or, in the supervisor's absence, alternative on-call supervisors to assist in handling crises.

(9) A professional clinical counselor supervisor shall make the counselor's supervisees aware of professional and ethical standards and legal responsibilities.

(10)(a) A professional clinical counselor supervisor or a supervisee shall have the right to terminate the supervisory relationship with adequate notice to the other party.

(b) The board shall consider adequate notice as a period of two (2) weeks unless there is an exigent circumstance, an emergency situation, or a competency issue such as in situations of substance abuse, a lack of competency, a violation of the code of ethics, or an exploitation of a client. In these kinds of situations then no notice is required.

(c) When termination is warranted, supervisors shall make appropriate referrals to possible alternative supervisors.

(11) Before providing counseling services, a supervisee shall disclose the supervisee's status as a supervisee and explain how this status affects the limits of confidentiality. Supervisors shall ensure that a client is aware of the services rendered and the qualifications of the supervisee rendering those services.

(12) Students and supervisees shall obtain client permission before they use any information concerning the counseling relationship in the training process.

(13) A professional clinical counselor supervisor shall document

and provide each supervisee with ongoing feedback regarding the supervisee's performance and schedule periodic formal evaluative sessions throughout the supervisory relationship.

Section 8. Financial Arrangements. A professional counselor shall:

- (1) Not charge an excessive fee for service;
- (2) Disclose the counselor's fees to a client and supervisee at the beginning of service;
- (3) Make financial arrangements with a patient, third-party payor, or supervisee that:
 - (a) Are reasonably understandable; and
 - (b) Conform to accepted professional practices;
- (4) Not offer or accept payment for a referral; and
- (5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 9. Advertising. (1) A professional counselor shall:

- (a) Accurately represent education, training, and experience relevant to the practice of professional counseling; and
 - (b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
 1. A business card;
 2. An office sign;
 3. Letterhead; or
 4. Telephone or association directory listing.
- (2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:
- (a) Contains a material misrepresentation of fact;
 - (b) Is intended to or likely to create an unjustified expectation; or
 - (c) Deletes a material fact or information.

Section 10. Referral and Termination. (1) A professional counselor shall not abandon or neglect a client in professional counseling.

(2) A professional counselor shall make a timely and appropriate referral of a client if:

(a) The professional counselor is unable to provide the work or service; or

(b) The client's need exceeds the competency of the professional counselor.

(3) A professional counselor shall terminate a professional counseling service if a client:

(a) Has attained his or her stated goal or objective; or

(b) Fails to benefit from the counseling service.

(4) A professional counselor shall communicate the referral or the termination of counseling service to a client.

(5) A professional counselor shall not terminate counseling service or refer a client for the purpose of entering into a personal relationship with the client, including:

(a) A sexual or an intimate relationship;

(b) A financial or business relationship; or

(c) Other activity that might serve a personal interest of the professional counselor.

(6) A professional counselor shall assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

(7) When a professional counselor transfers or refers a client to other practitioners, a professional counselor shall ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both the client and the practitioner.

Section 11. Recognized Standards of Ethics. A professional counselor shall not engage in conduct or practice that is contrary to recognized standards of ethics in the counseling profession. The board subscribes to the code of ethics and practice standards for counselors promulgated by the American Counseling Association.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnI1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the expected ethical behavior of a credential holder and protect the public seeking related services.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes a reporting requirement for licensees who are convicted of crimes, excluding minor traffic offenses, have a domestic violence order entered against them or have substantiated allegations of child abuse and neglect or elder abuse; and recognizes the ACA code of ethics which is the expected standard set forth in educational requirement regulation and is taught to all counselors.

(b) The necessity of the amendment to this administrative regulation: The board has been faced with several complaints where the code of ethics was not clear on whether a violation occurred; and, whether certain activities are reportable. The amendment expands and cures these issues.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will allow the Board to better protect

the general public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by any change to the code of ethics. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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 does not require any action to be taken to be in compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have a better understanding of their ethical obligations and duties.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), (7), (11).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:045. Distance counseling.

RELATES TO: KRS 335.505, 335.515(1), (3), (11), 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations related to telehealth. This administrative regulation establishes procedures for preventing abuse and fraud through the use of distance counseling, prevents fee-splitting through the use of distance counseling, and utilizes distance counseling in the provision of professional counseling services and in the provision of continuing education.

Section 1. Client Requirements. A counselor-client relationship may commence via distance counseling. An in-person 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 licensee using distance counseling to deliver counseling services or who practices distance counseling 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 licensee other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the licensee shall use for emergency purposes such as an emergency on call telephone number; ~~and~~

(5) Document if the client has the necessary knowledge and skills to benefit from the type of distance counseling provided by the licensee;

(6) Document which services were provided by distance counseling;

(7) 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; ~~and~~

(8) In accordance with KRS 211.334 and 900 KAR 12:005 Section 2(1)(c), obtain the informed consent of the client; and

(9) Inform the client in writing about:

(a) The limitations of using technology in the provision of distance counseling;

(b) Potential risks to confidentiality of information due to technology in the provision of distance counseling as required by 900 KAR 12:005(2)(a);

(c) Potential risks of disruption in the use of distance counseling;

(d) When and how the licensee will respond to routine electronic messages;

(e) In what circumstances the licensee will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the licensee;

(g) How communications can be directed to a specific licensee;

(h) How the licensee stores electronic communications from the client;

(i) Whether the licensee or client may elect to discontinue the provision of services through distance counseling; and

(j) The reporting of clients required by 201 KAR 36:040, Sections 2 and 3.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Limit the practice of distance counseling to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of distance counseling 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) Maintain records in accordance with the requirements of 201 KAR 36:040; ~~and~~

(5) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 211.332(5)(c); and

(6) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 3. Compliance with Federal, State, and Local Law. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Comply with the state law where the licensee initiates the distance counseling;

(2) Be licensed to practice counseling where the client is domiciled; ~~and~~

(3) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities; ~~and~~

(4) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(1)(b).

Section 4. Representation of Services and Code of Conduct. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Conform to the statutes and regulations governing the provision of counseling services in Kentucky;

(2) Not engage in false, misleading, or deceptive advertising of distance counseling in violation of KRS 335.540(1)(c);

(3) ~~[(2)]~~ Comply with the code of ethics, 201 KAR 36:040; and

~~[(3)]~~ Not split fees.

Section 5. Utilization of Distance Counseling in the Provision of Continuing Education. Providers approved pursuant to 201 KAR 36:030 may utilize distance counseling in the provision of continuing education courses.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

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Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnI1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for distance counseling and telehealth pursuant to KRS 211.332 - .338.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standards for use of distance counseling and telehealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The necessity of this regulation is to ensure compliance by licensed professional counselors for distance counseling in compliance with new telehealth standards set under KRS Chapter 211.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is in conformity as the authorizing statute which gives the board the ability to promulgate regulations regarding the use of distance counseling and telehealth

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing regulation to bring it up to date with the telehealth requirements set forth in KRS Chapter 211.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with the requirements of professional licensing boards to promulgate administrative regulations relating to new standards for telehealth which impacts distance counseling.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding use of telehealth by a credential holder as set forth in KRS 211.332 through .338.

(d) How the amendment will assist in the effective administration

of the statutes: The amendment updates and clarifies the telehealth requirements that impact the delivery of distance counseling that was already authorized.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who may be impacted by the changes to the telehealth law if they choose to provide services via telehealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment? Licensees will have to take appropriate measures to ensure or enhance any technology used to comply with security, encryption, and confidentiality requirements in compliance with state and federal law.

(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 way to tell how much it may cost any entity as it is dependent on whether they choose to engage in telehealth services and/or the update needs of their data systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows more accessible services to clients, as well as more opportunities for licensees to provide telehealth services under regulations that comply with recent telehealth standards adopted by the legislature; and improve the safety and confidentiality of any client using the services.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), KRS 211.332, KRS 211.334, KRS 211.335, and KRS 211.336.

(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? There are no additional costs to administer this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Indeterminable. Cost savings could result from providing telehealth services but any specific dollar amount cannot be calculated because it would be largely based on each licensee's business model and incorporation of telehealth services, if any.

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

(c) How much will it cost the regulated entities for the first year? Indeterminable. The costs will be based on each licensee's existing data systems and whatever updates are needed to comply with state and federal regulatory security and other HIPAA requirements.

(d) How much will it cost the regulated entities for subsequent years? Indeterminable. The costs will be based on each licensee's existing data systems and whatever updates are needed to comply with state and federal regulatory security and other HIPAA requirements.

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

Cost Savings (+/-): Indeterminable.

Expenditures (+/-): Indeterminable.

Other Explanation: The cost savings is indeterminable and would be based on each licensee's individual circumstances and how the licensee incorporated telehealth into the practice; and, any expenditures cannot be estimated because it will be based on each licensee's existing data systems and whatever updates are needed to comply with state and federal regulatory security and other HIPAA requirements.

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity;

(b) Shall be:

1. In writing and provided on the Complaints Form, DPL-LPC-12; and

2. Signed by the person offering the complaint; and

(c) May be filed by the board based upon information in its possession.

(2)

(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)

(a) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review.

(1) After the receipt of a complaint and the expiration of the period for the individual's response or reply, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair[chairman] and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4. Settlement by Informal Proceedings.

(1) The board, through counsel and the complaint screening

committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair[chairman].

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5.

(1) If the complaint screening committee determines that a violation has occurred but is not serious, the complaint screening committee may recommend the issuance of a private written reprimand to the board. If the board accepts the recommendation, the board shall issue a private written reprimand to the credential holder.

(2) A copy of the private written reprimand shall be placed in the permanent file of the credential holder.

(3) A private written reprimand shall not:

(a) Be subject to disclosure to the public under KRS 61.878(1)(l); or

(b) Constitute disciplinary action.

(4) A private written reprimand may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) An action to restrain or enjoin a violation of KRS 335.505. 201 KAR 36:050.

Section 9. Incorporation by Reference.

(1) "Complaint Form", DPL-LPC-12, July 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at ipc.ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

(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 includes housekeeping changes to recognize the reply time given in the regulations and to clarify the complaint must be filed on the prescribed form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to recognize the reply and clarify that the complaint be filed on the prescribed form to assist in the efficient administration of the complaint process.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in the complaint process to ensure there is sufficient information to pursue an inquiry into the complaint.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by the renewal, late renewal, and reinstatement fees. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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: A licensee will have to take no additional action to comply with the amendments if a disciplinary action ensues against the licensee.

(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 new cost associated to the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment recognizes the reply and clarifies that the initiating complaint be filed on the prescribed form.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), KRS 211.332, KRS 211.334, KRS 211.335, and KRS 211.336.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: 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.

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

(c) How much will it cost the regulated entities for the first year?

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

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation: N/A

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

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that the board shall issue a "professional clinical counselor" license to an applicant who has completed a minimum of 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and experience under supervision.

Section 1. Requirements for the Practice of Professional Counseling.

(1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

- (a) The helping relationship, including counseling theory and practice;
- (b) Human growth and development;
- (c) Lifestyle and career development;
- (d) Group dynamics, process, counseling, and consulting;
- (e) Assessment, appraisal, and testing of individuals;
- (f) Social and cultural foundation, including multicultural issues;
- (g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (h) Research and evaluation; and
- (i) Professional orientation and ethics.

Section 2. Supervision.

(1) A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor.

(2) The supervisor shall manage, oversee, and direct the supervisee, taking responsibility for the professional clinical counseling practice of the supervisee.

(3) The supervisor shall have access to, and shall review, the supervisee's clinical documentation, when needed, and have a signed agreement with the supervisee's agency, if off-site, allowing the supervisor to:

(a) Review the supervisee's clinical documentation and records;

(b) View the supervisee's client sessions in face-to-face format, recorded format, or both, if available;

(c) Communicate with the supervisee's administrative supervisor, if applicable, regarding the supervisee's performance.

(4) The supervisor shall use observations from the supervisee's clinical documentation, client sessions, and communications with the administrative supervisor, if applicable, to inform supervision and shall document these observations in supervisory notes.

(5) The supervisor shall verify on the annual renewal application that he or she has reviewed 201 KAR 36:060 and 201 KAR 36:065.

Section 3. LPCA Supervision Agreement.

(1) A supervisee shall enter into a written supervision agreement with an approved supervisor. The supervision agreement shall contain:

- (a) The name and address of the supervisee;
- (b) The name, address, license or certification number, and number of years of practice of the supervisor of record;
- (c) The name, address, license or certification number, and number of years of practice of other supervisors;
- (d) The agency, institution, or organization where the experience will be received;
- (e) A detailed description of the nature of the practice including the type of:
 - 1. Clients that will be seen;
 - 2. Therapies and treatment modalities that will be used including the prospective length of treatment; and
 - 3. Problems that will be treated;
- (f) The nature, duration, and frequency of the supervision, including the:
 - 1. Number of hours of supervision per week;
 - 2. Number of hours of individual supervision;
 - 3. Methodology for transmission of case information; and
 - 4. Number of hours of face-to-face supervision that meet the requirements of KRS 335.525(1)(e);
- (g) A statement that supervision:
 - 1. Shall occur a minimum of:
 - a. Three (3) times per month and one (1) hour per meeting for a full time practice that consists of twenty-five (25) clock hours or greater per week; or
 - b. One (1) hour for every thirty (30) hours of client contact for a part time practice that consists of less than twenty-five (25) clock hours per week; and
 - 2. May include interactive, simultaneous video and audio media that meet applicable legal requirements for information required to be kept confidential;
- (h) The conditions or procedures for termination of the supervision;

- (i) A statement that:
 - 1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and
 - 2. The supervisor of record meets the criteria established in Section 2 of this administrative regulation; and
- (j) The signatures of both the supervisor and the supervisee.

(k) A copy of a signed agreement between the supervisor and the supervisee's agency, if off-site, allowing the supervisor to:

- 1. Review the supervisee's clinical documentation and records;
- 2. View the supervisee's client sessions in face-to-face format, recorded format, or both if available; and

3. Regularly communicate with the supervisee's administrative supervisor, if applicable, regarding the supervisee's professionalism, using an agreed upon schedule.

(2) If a supervisee changes his or her supervisor of record or job placement as identified in the supervision agreement, the supervisee shall submit a new supervision agreement, which sets forth the information required by this section.

(3) The licensed professional counselor associate may begin the practice of professional counseling upon the board's approval of the agreement.

Section 4. Multiple Supervisors. The board may approve more

than one (1) supervisor of record if an applicant or licensee submits a written request. The board may require the applicant and any supervisors to appear before the board to present a plan for the supervision.

Section 5. Experience Under Supervision.

(1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may approve an applicant's hours of experience under supervision obtained in another jurisdiction if the jurisdiction's regulatory board issuing professional clinical counselor licenses certifies that:

(a) It approved the hours;

(b) It approved the supervisor; and

(c) The hours were obtained after the applicant received a master's, specialist, or doctoral degree in counseling or a related field.

Section 6. Supervision Requirements.

(1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision Agreement required by Section 3 of this administrative regulation are not followed; or

(b) The supervision agreement is terminated for any reason other than the extenuating circumstances that allow temporary supervision in Section 8 of this administrative regulation.

(3) If the terms of the supervision agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 7. Evaluation by Board. The board shall evaluate the period of supervised experience required by KRS 335.525(1)(e) according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision agreement required by Section 3 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit:

(a) Documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor required by 201 KAR 36:070;

(b) Information that verifies:

1. That the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

2. That the supervisor is in good standing with the certifying or licensing state; and

3. That the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8. Temporary Supervision.

(1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may

continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)

(a) Within ten (10) days of the occurrence causing the extenuating circumstance, the supervisee shall notify the board of the need for temporary supervision.

(b) Within thirty (30) calendar days of the change in status of board-approved supervision, the supervisee shall submit, in writing, a plan for resolution of the situation. The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(c) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 9. Incorporation by Reference.

(1) The "LPCA Supervision Agreement", DPL-LPC-02, July 2023, [September, 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 500 Mero Street [911 Leewood Drive], 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 lpc.ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnI1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 335.525(1)(e) and to establish permissible ways to obtain board-approved supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process for supervisees to obtain required supervision prior to licensure as professional counselors.

(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 clarifies the role and responsibilities of the supervisor, ensures the supervisor's access to supervisee's clinical documentation to ensure proper oversight, and sets forth communication requirements; requires annual verification of the supervisor's review of the regulations relating to their responsibilities as set forth in 201 KAR 36:060 and 201 KAR 36:065; establishes additional requirements related to the supervision agreement; requires the supervisee to assist with the execution of a signed agreement with the job placement agency to allow the supervisor to have access to the supervisee's clinical records and communicate with the administrative supervisor; and clarifies there is a requirement that a new supervision agreement must be filed if the supervisee changes a job placement, which was already required by the terms of the supervision agreement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly establish the roles and responsibilities of the supervisor to ensure the supervisee has appropriate supervision in an effort to protect the health, safety, and welfare of the public.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the supervisor's role and responsibilities in meeting the requirements of KRS 335.525(1)(e).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure supervisors are properly supervising supervisees in compliance with KRS 335.525(1)(e) to ensure public safety.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1055 licensees with an LPCC-S credential, with 531 actively supervising 1325 active licensed professional clinical counselor associates (LPCAs) who will be impacted by this amendment. This regulation will also affect new applicants for LPCA licensure, as well as small businesses who employ LPCAs since they must sign an agreement allowing the clinical supervisor to have access to client records, sessions, and recordings, and access to communication with the administrative supervisor.

(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: Any LPCC-S will be required to provide an annual verification they have reviewed 201 KAR 36:060 and 201 KAR 36:065 and assume all responsibilities clearly listed they may not have previously assumed. Any LPCA supervisee will have to assist with the execution of a signed agreement with the job placement agency to allow the supervisor to have access to clinical records and communicate with the administrative supervisor, as well as work with the supervisor as required by the role and responsibility. The job placement agency (a small business) will be required to sign the agreement as well. The LPCA is already required to execute a new supervision agreement upon a change in job placement, as has been required in the supervision agreement and the amendment includes this requirement to support this long-time practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional direct cost to regulated entities from complying with this amendment. The regulated entities should already be engaging in these practices.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Supervisees will be properly supervised to ensure the health, safety and welfare of the clients they serve and supervisors will be aware of the expectations of the role, as well as the responsibilities of being a supervisor.

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

(a) Initially: No additional cost to the Board is anticipated to implement and enforce this amendment.

(b) On a continuing basis: No additional cost to the Board is anticipated to implement and enforce this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants. No additional funding is required for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensed Professional Counselors will be affected by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: 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.

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

(c) How much will it cost the regulated entities for the first year?

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

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e), 5(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. KRS 335.525(5)(a) requires a licensed professional counselor associate to maintain ongoing supervision as approved by the board. This administrative regulation establishes the qualifications of a supervisor and establishes the roles and responsibilities of the supervisor.

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor under discipline or a licensed professional counselor associate, an applicant shall:

(a) Submit a LPCC-S Application with supporting documentation that includes one (1) of the following:

1. A certificate or certificates documenting the completion of~~from the~~ fifteen (15) hours in a board-approved~~hour~~ CEU course on supervision; or

2. Two (2) years of board-approved supervision agreements to support the five (5) years of experience as a licensed professional clinical counselor supervisor; or

3. A copy of the transcript~~the syllabus as proof of completion~~ of a supervision course in a graduate program;

(b) Be licensed by the board as a licensed professional clinical counselor;

(c) Not have:

1. An unresolved complaint that has been:

a. Reviewed by the complaints screening committee and referred for investigation; or~~citation-~~

b. Filed against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate;~~or~~

3. Been under discipline by the board within the last two (2) years preceding the application; or

4.~~3.~~ An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

(d) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(e) If coming from another state:

1. Show proof of supervisory status in the other state;

2. Take a three (3) hour board-approved training on Kentucky law; and

3. Not have an order from the board of another state prohibiting the applicant from providing supervision.~~Have taught or completed a:~~

1. Three (3) hour graduate level course in counseling supervision; or

2. Fifteen (15) hour board-approved supervisor training course;

(2) [Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(e) of this section.

(3) A three (3) hour graduate level course exclusively on counseling supervision or the board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) The board-approved supervisor training course shall be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(3) Nothing in this section shall preclude the board from considering information provided by the applicant warranting the issuance of the supervisor designation.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6)~~twelve (12)~~ persons obtaining experience for licensure at the same time.

Section 3. A supervisor who is placed under discipline shall be ineligible to act as a supervisor and shall not become eligible to apply for reinstatement as a supervisor no earlier than two (2) years following the completion of any disciplinary action, including completion of any suspension or probationary period. Further, a board-approved supervision training shall be required prior to reinstatement.

Section 4.~~Section 3.~~ Incorporation by Reference. (1) "LPCC-S Application", DPL-LPC-03, July 2023~~September 2017~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street~~911 Leewood Drive~~, 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 <https://lpc.ky.gov>.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing, Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMn1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the following address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be a board-approved

supervisor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for board-approved supervisors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board approved supervisor

(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 strikes language that allowed grandfathering of pre-existing supervision agreements with other professional credential holders since time has expired for grandfathering; clarifies requirements to qualify as a supervisor and strikes redundant language; clarifies the supervisor applicant have no unresolved complaints versus citation and adds a two-year restriction to supervision following any discipline; and provides clarification on the requirements for out-of-state supervisory applicants, including removal of the requirement for a graduate and supervisory training courses and strikes the grandfather provision since the time it would apply for has lapsed; reduces the maximum number of supervisees from twelve (12) to six (6); and includes new provisions regarding supervisors under discipline.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the educational and experiential requirements for supervisory qualification; establish parameters and restrictions for supervisor status for licensees who are disciplined which has recently been problematic; and reduce the number of licensees a supervisor may supervise to ensure competency of services, prevent burnout and to protect the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the board's delegated authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists by clarifying the process for becoming a designated supervisor, the requirements of a graduate-level course to becoming a designated supervisor, reducing the number of supervisees to a more manageable number in order to ensure competency, avoid burnout and protect the public, and establishing standards and restrictions on supervisory qualification or status during and after discipline to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 4017 active and 56 inactive licensees who may be affected by the amendments in some capacity, as well as any new applicants for licensure. Presently, there are 2692 active licensed professional clinical counselors (LPCCs) of which 1055 has a supervisor credential and 531 are actively supervising. There are 1325 active licensed professional clinical counselor associates (LPCAs) under supervision who will be directly affected by these amendments.

(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 require supervisors with more than six (6) supervisees to terminate supervision agreements for any number over six (6); and the amendment will require terminated supervisees to find another supervisor in order to ensure continuation of services to clients. There are 31 supervisors who will be affected by this change.

(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 new cost/fee associated with the amendments. However, any reduction in the number of supervisees

by a supervisor will result in an overall loss of income based on a reduced number of supervision fees to those supervisors. This will affect 2.9% of all licensees with the supervisory credential and 5.8% of those who are active supervisors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and a board-approved supervisor, that licensees needing supervision are not being supervised by someone who is or has recently been under discipline, and that a supervisor does not have too many supervisees to ensure competency, avoid burnout and protect the public protect.

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

(a) Initially: No costs by the administrative body will be incurred to implement these changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3), and (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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? 5.8% of those who are active supervisors have more than six (6) supervisees and will be required to terminate some of their supervision agreements. However, the cost is indeterminable. Some

supervision services are pro bono and the fee varies since some have a sliding scale depending on the supervisee's work status (employer-paid supervision versus supervisee-paid).

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

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

Cost Savings (+/-): None

Expenditures (+/-): Indeterminable

Other Explanation: Some supervision services are pro bono and the fee varies since some have a sliding scale depending on the supervisee's work status (employer-paid supervision versus supervisee-paid).

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Application, education, and examination requirements.

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a), 335B.020

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's, specialist, or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the application, education, and examination requirements for licensure.

Section 1.

(1) Degree in Counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in each of the nine (9) content areas

established in KRS 335.525(1)(d) or 335.527(1)(a);

2. Include an academic course taken as part of the curriculum of the degree ~~[three (3) semester hours or four and one-half (4.5) quarter hours, at the minimum;]~~ on professional orientation and ethics with the concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, Christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or, if that applicant is applying for endorsement, in each area listed in KRS 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or, if that applicant is applying for endorsement, in all nine (9) of the content areas listed in KRS 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation.

(1)(a) All coursework submitted for licensure shall be from a regionally accredited educational institution ~~], which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or Western Association of Schools and Colleges.~~

~~(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.]~~

(2) An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) ~~[or its affiliates]~~. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

(b) Maintains continuous enrollment; and

(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

(3) If an applicant needs to acquire additional hours, they shall be from a CACREP- accredited program.

Section 3. Examination. An applicant for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure.

(1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor to the board;

2. Pay the fee as established in 201 KAR 36:020;

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;

4. Complete coursework in ~~[at least three (3) semester hours or four and one-half (4.5) quarter hours for]~~ each of the following curriculum content areas as:

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation processes, and includes the following:

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations;

b. Human growth and development that provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations;

c. Lifestyle and career development that provides an understanding of career counseling, development and related factors. Coursework includes the following:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources, including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting that provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, and includes the following:

(i) Principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals that provides an understanding of individual and group approaches to

assessment and evaluation in counseling practice. Coursework includes the following:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

(iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;

(vii) Strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling; and

(viii) Ethical considerations;

f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, and includes the following:

(i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) Individual, family, and group counseling strategies with diverse populations; and

(iv) Ethical considerations;

g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior that provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework shall include[includes] the following:

(i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, ~~[such as the]~~ and the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM)[, fifth (5th) edition, or the DSM currently in use];

(ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;

(iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and psychological disorders;

(iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and

(v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;

h. Research and evaluation is a course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework includes the following:

(i) Basic types of research methods to include qualitative and quantitative research designs;

(ii) Basic parametric and nonparametric statistics;

(iii) Principles, practices, and applications of needs assessment and program evaluation;

(iv) Uses of computers for data management and analysis; and

(v) Ethical and legal considerations;

i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework includes the following:

(i) History of the counseling profession, including significant

factors and events;

(ii) Professional roles and functions of mental health counselors, including similarities and differences with other types of professionals;

(iii) Professional organizations (primarily the American Counseling Association (ACA), its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of the National Board of Certified Counselors (NBCC) or the ACA and related ethical and legal issues, and the applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, the evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

j. Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which includes the following:

(i) 600 clock hours of total experience;

(ii) At least 240 clock hours of direct service, which include diagnosis, treatment planning, assessment, techniques, and intervention, and[including] experience leading groups;

(iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;

(iv) An average of one and one-half (1 1/2) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;

(v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service (e.g., record keeping, assessment instruments, supervision, information and referral, in-service and staff meetings);

(vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and

(vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit the results of a background check performed within the last ninety (90) days by ~~[the Kentucky State Police and a criminal background check performed by]~~ the Federal Bureau of Investigation (FBI). ~~[If an applicant submits an application for a nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.]~~Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subparagraph. If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or the degree in a related field is not from a CACREP accredited institution.

(b) If applying for licensure via endorsement~~[for reciprocity]~~, an applicant shall:

1. Meet the requirements in paragraph (a)1. and 2. of this subsection; and

2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional

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counselor associate shall:

(a) Submit an Application for Licensed Professional Counselor Associate to the board;

(b) Pay the fee as established in 201 KAR 36:020;

(c) Submit an official transcript;

(d) Satisfy the requirements of subsection (1)(a)4. of this section;

(e) Submit the results of a background check performed within the last ninety (90) days [by the Kentucky State Police and a criminal background check performed] by the FBI. [If an applicant submits an application for a nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.] Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this paragraph. [If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing;] and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5.

(1) An applicant for licensure shall be of good moral character. If an applicant lacks good moral character, the applicant has the duty to provide available evidence relative of rehabilitation.

(2) For evidence relative of rehabilitation, the board may [shall] consider relevant evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(3) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Denial of Licensure. The board may refuse to issue, renew, or reinstate a license if the applicant:

(1) Committed fraud or misrepresentation in applying for a license in this state or another state.

(2) Has been convicted of the following:

(a) A misdemeanor within the last five (5) years, except for minor traffic offenses and in compliance with KRS 335B.020; or

(b) Any felony offense; or

(c) A crime involving moral turpitude, including a substantiated charge of child abuse or neglect pursuant to KRS Chapter 620; adult abuse, neglect or exploitation pursuant to KRS Chapter 209; or a crime classified as domestic violence, a sex offense or stalking;

(3) Is a respondent in a case with an active order of protection following notice and an opportunity to be heard pursuant to KRS Chapter 403 or KRS Chapter 456;

(4) Does not meet the qualifications as prescribed in KRS Chapter 335 and 201 KAR Title 36;

(5) Has been declared incompetent by a qualified mental health professional appointed by the board or by a court of competent jurisdiction, including those subject to KRS Chapter 202A and Chapter 387 proceedings;

(6) Has engaged in fraud, dishonesty, or corruption on a certification of examination in this state or another state.

Section 7.

(1) The board may approve remedial work to correct any deficiency to satisfy Sections 1 and 4 of this administrative regulation.

(2) The board shall not approve remedial work for degrees listed in Section 1(3) of this administrative regulation.

Section 8. [Section 7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensed Professional Clinical Counselor",

DPL-LPC-04, July 2023[October 2017]; and

(b) "Application for Licensed Professional Counselor Associate", DPL-LPC-05, July 2023[January 2017; and

(c) "Optional Affidavit for Licensure", June 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors [Division of Occupations and Professions], 500 Mero Street [911 Leawood Drive], 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 lpc.@ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing, Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnI1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, education, and examination requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the application, education and examination requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(b) requires that an applicant is of good moral character. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the Board. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and

examination that are acceptable for licensure, as well as certain grounds for denial of licensure, renewal or reinstatement.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the educational course work required for licensure; removes reference to specific regional institutions associations for accreditation to clarify the administrative body's intention that the accrediting institution must be CACREP-accredited and to eliminate the need to revise the regulations every time the name of an institution changes; requires utilization of the online application portal, with exceptions, to streamline administration and reduce the delay in processing the application; cleans up language relating to the proper DSM; clarifies that "direct service" includes diagnosis, treatment planning, assessment, techniques and interventions in compliance with KRS 535.525(1)(d) and (e); requires all background checks to be performed by the FBI; establishes grounds for denial of licensure, renewal or reinstatement; removes the Optional Affidavit for Licensure option since the original intent for a reduction in delayed licensure is no longer needed and cleans up additional language relating to the Affidavit.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the qualifying academic institutions for licensure; to clarify the educational and experiential direct service standards considered by the administrative body for licensure; to standardize background checks through the FBI to ensure complete information with a prompt response to avoid unnecessary delay in processing and for public safety; to clarify grounds for denial of licensure, renewal or reinstatement; and to remove the Optional Affidavit for Licensure as it is no longer needed.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with KRS 335.515(1), (3), 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists by clarifying the educational, direct service and background check requirements process for licensure; clarifies the board's grounds for denial of a license, renewal, or reinstatement; and will eliminate the additional KSP background check step and cost for applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an average of 70-80 applications for licensure monthly, as well as 4017 active licensees who must annually renew and 56 inactive licensees who may apply for reinstatement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will have to submit a criminal background check and syllabi, as well as report any conviction (which they are already required to do), as well report any substantiated act of child abuse and neglect, adult abuse and entry of any domestic violence order where the applicant is a respondent and the subject of the order.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new cost and the cost should even be reduced since only one background check is required. There will be a cost of obtaining a criminal background check, which the board understands to be between \$10 and \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reduced costs for background check and prompt processing for application due to delays in the Kentucky background check; and public safety in approval of the application with an affidavit versus a complete background check.

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

(a) Initially: No costs by the administrative body will be incurred

to implement these changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 regulated entities will save \$20 for a background check which is actually a duplicate since the KSP information is contained in the FBI background check.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings of \$20 realized for elimination of KSP records check for a new applicant, as well as licensee's applying for reinstatement due to becoming inactive or failing to renew in a timely manner.

(c) How much will it cost the regulated entities for the first year? The cost for the FBI background check is approximately \$32 for the FBI fee and IdentiGo fingerprinting fee, which is the no change to the current required expenditure for applicants and reinstatements.

(d) How much will it cost the regulated entities for subsequent years? There is no cost in subsequent years if the licensee keeps

the license active. If the licensee goes inactive or fails to timely renew, another FBI background check with the estimated \$32 fee is required, which is the no change to the current required expenditure for applicants and reinstatements.

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

Cost Savings (+/-): - \$20

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS **Board of Licensed Professional Counselors** **(Amendment)**

201 KAR 36:072. Reciprocity requirements for applicants licensed or certified in another state.

RELATES TO: KRS 335.515(12), 335B.020, 12.245, 12.255, 12.357

STATUTORY AUTHORITY: KRS 335.515(1), (3), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(1) requires the board to evaluate the qualifications of applicants for licensure. KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(12) authorizes the board to enter into reciprocal agreements with certified or licensed professional counseling boards. This administrative regulation establishes the reciprocity requirements for certification or licensure of persons licensed or certified in another state.

Section 1. (1) The licensing requirements for a licensed professional clinical counselor under KRS 335.525 or 335.527 may be waived if:

- (a) The board enters into a written reciprocity agreement with the other jurisdiction;
 - (b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;
 - (c) The board determines that the licensing requirements of the other jurisdiction are substantially similar to the requirements of KRS 335.500 to 335.599;
 - (d) The applicant holds an active valid license or certificate in the other jurisdiction;
 - (e) The applicant is in good standing in the other jurisdiction;
 - (f) The applicant has not been disciplined or reprimanded;
 - (g) The applicant:
 1. Does not have a pending disciplinary action; or
 2. Is under investigation by any jurisdiction; and
 - (h) The applicant is of good moral character.
- (2) No person shall be licensed as a licensed professional associate through reciprocity.

Section 2. An applicant seeking licensure as a licensed professional clinical counselor shall:

- (1) Submit an Application for Licensed Professional Clinical Counselor by Reciprocity to the board;
- (2) Pay the application fee as established in 201 KAR 36:020, Section 1(1);
- (3) Submit a letter of good standing from each jurisdiction where the person holds a license or certificate; and
- (4) Submit the results of a background check performed within the last ninety (90) days from the submission date of the application for a criminal background check performed by ~~the Kentucky State Police and~~ the Federal Bureau of Investigation (FBI). ~~[If an applicant~~

~~submits an application for a nationwide criminal background check performed by the FBI and the FBI cannot complete the background check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure, as incorporated by reference in 201 KAR 36:070, and shall submit the performed nationwide criminal background check within fourteen (14) days of its receipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years, or a pending charge, the applicant shall not use the Optional Affidavit for Licensure.] Any cases officially expunged do not have to be disclosed by the applicant and shall not be considered by the board as a conviction for the purposes of this subsection. [If an applicant does not receive the criminal background check within 180 days of the issuance of a license, the applicant shall notify the board immediately in writing.]~~

Section 3. An applicant granted a license under this administrative regulation shall comply with the continuing education requirements under 201 KAR 36:030 and the renewal requirements of 201 KAR 36:075.

Section 4.

(1) The board, by majority vote and during a board meeting, shall determine if the licensing requirements of another jurisdiction are substantially similar to the requirements of KRS 335.500 to 335.599.

(2) The board may only approve a reciprocity agreement with another jurisdiction if Section 1(1)(a), (b), and (c) of this administrative regulation are satisfied.

(3) The board shall publish the determination and approval of a reciprocity agreement in its board minutes.

Section 5. Incorporation by Reference. (1) "Application for Licensed Professional Clinical Counselor by Reciprocity", DPL-LPC-06, July 2023~~[November 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors~~[Division of Occupations and Professions]~~, 500 Mero Street~~[911 Leawood Drive]~~, 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 lpc.@ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing, Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: [https://ppc.ky.gov/reg_comment.aspx](https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMn1K0ZDd3M5dz09, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: <a href=). 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: Sara Boswell Janes, Staff Attorney III,

Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reciprocity requirements for applicants licensed or certified in another state as a licensed clinical professional counselor or its equivalent.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to issue a license to an applicant if there is a reciprocity agreement with the jurisdiction where the licensee holds a license or certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment is in conformity with the Board's delegated authority

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the reciprocity requirements for applicants licensed or certified in another 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: The amendment requires use of the online portal for reciprocity application, with exceptions, strikes the requirement for a KSP background check and requires only the FBI background check; and updates the MIR.

(b) The necessity of the amendment to this administrative regulation: Requiring the use of the only portal for the application for reciprocity, with exceptions, streamlines the administrative process reduces the delay in application processing; the FBI records check provides a complete criminal history without delay and reduces the cost to the applicant for unnecessary record retrieval; and updates the MIR.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with KRS 335.527 relating to licensing reciprocity requirements and KRS 335.515 authorizing the board's authority to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 225.599.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board applying the statutes and regulations to streamline the process for the application for reciprocity and for complete criminal history information to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 licensed professional clinical counselors and 1325 licensed professional clinical counselor associates. The board reviews 800 – 1000 applications for licensure annually, which include applications for licensure by reciprocity or endorsement. The board does not have statistics on the number of licensees or applicants there are with reciprocity.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant seeking licensure through reciprocity must complete the appropriate application through the online portal, along with the required documents.

(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 new cost associated to the amendments. It is estimated to cost between \$150 to \$250 dollar to obtain all necessary documents for licensure.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The benefit will be that it will provide more competent mental health professionals in Kentucky and reduce the amount of documentation needed to obtain licensure. A further benefit will be a reduction of paper applications which will improve the efficiency and timeline of the review process. The online application process was implemented in 2018 yet some people still submit paper applications. These take much longer to process and the delay creates multiple inquiries by applicant the delay, thereby increasing the cost for administration.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3), (12).

(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? There are no additional costs to administer this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Minimal. A reduced cost of \$20 for the KSP background check will be a savings in the year of application.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None unless the license expires and an application for reinstatement must be made which also requires a criminal history.

(c) How much will it cost the regulated entities for the first year? The cost of the FBI background check and fingerprinting fee which is not a change in cost already required.

(d) How much will it cost the regulated entities for subsequent years? Nothing unless the license expires or becomes inactive and reinstatement is required.

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

Cost Savings (+/-): \$20

Expenditures (+/-):

Other Explanation: The current cost for FBI background check and fingerprinting fee. Therefore, with the amendment the applicant's costs are reduced by \$20 due to elimination of the KSP background check.

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

BOARDS AND COMMISSIONS Board of Licensed Professional Counselors (Amendment)

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

RELATES TO: KRS 335.535

STATUTORY AUTHORITY: KRS 335.515(1), (3), (6), 335.535
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(6) and KRS 335.535 require the holder of a license to renew that license annually. This administrative regulation establishes the requirements for renewal, late renewal, and reinstatement of a license.

Section 1.

(1) A license shall be renewed by October 31 of each year.

(2) A person receiving an initial license within 120 days prior to the renewal date shall not be required to renew until October 31 of the following year.

Section 2.

(1) To apply for renewal, a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(a), for the renewal of a license.

(2) After the sixty (60) day grace period, in order to apply for reinstatement, an individual who has a terminated license as a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Reinstatement Application;

(b) Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year ~~prior to~~ the filing of an application for reinstatement;

(c) Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36 within one (1) year ~~prior to~~ the filing of an application for reinstatement;

(d) Submit a background check performed within the last ninety (90) days by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation;

(e) Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(a); and

(f) Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(a).

Section 3.

(1) To apply for renewal, a licensed professional counselor

associate shall:

(a) Submit a completed LPCA Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(b), for the renewal of a license.

(2)

(a) After the sixty (60) day grace period or revocation of a license, in order to apply for reinstatement, an individual who has a terminated license as a professional clinical counselor associate shall:

1. Submit a completed LPCA Reinstatement Application;

2. Submit a background check performed within the last ninety (90) days by the ~~Kentucky State Police and a criminal background check performed by the~~ Federal Bureau of Investigation;

3. Submit proof of completing ten (10) hours of board-approved continuing education completed within one (1) year of the filing for reinstatement;

4. Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, within one (1) year of the filing for reinstatement;

5. Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(b); and

6. Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(b).

(b) A person who applies for reinstatement within three (3) years of termination or revocation of the license shall be required to meet current continuing education requirements established in 201 KAR 36:030.

(c) A person who fails to apply for reinstatement within three (3) years of termination or revocation of the license shall meet the current licensure requirements.

Section 4.

(1) A person shall not engage in the practice of professional counseling after a license has been terminated.

(2) The ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement shall not count towards the applicant's continuing education requirement under 201 KAR 36:030, Section 1(1).

(3) If a supervisor fails to verify the hours required for a licensed professional counselor associate by the termination date of the license, then the LPCA Supervision Agreement, as incorporated by reference in 201 KAR 36:060, shall be terminated.

Section 5.

(1) A licensee for renewal or applicant for reinstatement shall maintain good moral character.

(2) If an applicant lacks good moral character and the incident that resulted in the lack of good moral character occurred since issuance of the initial license or last renewal date, the applicant has the duty to provide available evidence relative of rehabilitation.

(3) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(4) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "LPCC Renewal Application", DPL-LPC-07, July 2023 [February 2017];

(b) "LPCA Renewal Application", DPL-LPC-08, July 2023 [February 2017];

(c) "LPCC Reinstatement Application", DPL-LPC-09, July 2023 [February 2017]; and

(d) "LPCA Reinstatement Application", DPL-LPC-10, July 2023 [February 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 500 Mero Street~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to

4:00[4:30] p.m. This material may also be found on the board's website at lpc@ky.gov.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing

Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMn1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Title: Staff Attorney III, Agency: Department of Professional Licensing, Office of Legal Services, Address: 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to inform a licensee of the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the renewal, reinstatement, and reactivation of a license

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes some housekeeping clarifications and amends the background check to be conducted solely by the FBI since it is a comprehensive check that includes a statewide criminal history.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to streamline the application process, reduce steps and costs to the applicant, and for efficiency in administration.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expedite the application process by using the most efficient, national resource and create more efficient administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 4017 active and 56 inactive licensees who will be affected by this administrative regulation in some capacity. The board reviews approximately 800 to 1000 applications annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

(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 new cost associated to the amendments. However, the existing costs may be reduces due to one fewer background check being required under certain circumstances.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for a background check for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no new fee.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), 335.525(6), and 335.535.

(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? There are no additional costs to administer this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? If an applicant is required to obtain a background check for reinstatement, a savings of \$20 will be realized due to the removal of the KSP background check.

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

(c) How much will it cost the regulated entities for the first year? The cost of renewal or reinstatement plus the cost of the record check, if required.

(d) How much will it cost the regulated entities for subsequent years? Renewal costs are annual. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): If a background check is required for reinstatement, the cost is \$20 less due to the removal of the KSP background check requirement.

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amendment)

201 KAR 36:090. Administrative hearings for denials and revocation of probated sanction[probation].

RELATES TO: KRS 335.515(3), (4), 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

NECESSITY, FUNCTION AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(4) requires the board to conduct administrative hearings as necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures for an individual to request an administrative hearing from the denial of or refusal to renew or reinstate a license, or revocation of a probated sanction.

Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstatement a License.

(1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date

that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process and that was considered as part of the denial of the application.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 2. Revocation of Probated Sanction[Probation].

(1) If the board moves to revoke a probated sanction[probation], the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the revocation shall be effective upon the expiration date for the certificate holder to request an appeal.

Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 500 Mero Street[944 Leawood Drive], Frankfort, Kentucky 40601.

Section 4. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees may[shall] be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

DR. HANNAH COYT, Chair

APPROVED BY AGENCY: September 13, 2023

FILED WITH LRC: September 14, 2023 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 p.m. EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference: Topic: LPC Regulation Public Hearing, Time: Nov 28, 2023 01:00 PM Eastern Time. Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMn1K0ZDd3M5dz09>, Password: 186265, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 387980. Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This

hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023. Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish due process procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 335.515(3) which authorizes the board to promulgate regulations the denial, renewal, reinstatement, and revocation of a probation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

(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 minor amendment to clarify terminology relating to probation of a disciplinary sanction, to make application of a fine discretionary, and a technical amendment to correct the physical address of the Board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the board's usage of the term probation, to make imposition of a fine discretionary versus mandatory and to make a technical correction to the address of the Board.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: Licensees will understand the term probation in the context of board discipline, clarify the board's discretion in imposing fines and have the current physical address of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 4017 active and 56 inactive licensees who may be affected by the terminology relating to probated sanctions and the physical address of the board, and also any member of the public who may have redress over the actions or inactions of licensees of the board who will know the physical location of the Board.

(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: A licensee will have to take no additional action to comply with 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 new cost associated to the amendments

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Stakeholders will know the current location of the Board.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no new fee.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), (4), (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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year?

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

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

RELATES TO: KRS 224.1-010, 224.50-760, 224.50-765

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations that are consistent~~[not inconsistent]~~ with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit, pursuant to administrative regulations adopted by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions.

(1) "Beneficial reuse":

(a) Means the use or reuse of special wastes~~[, other than solids, residues, and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant that are subject to the provisions of 401 KAR 45:100.]~~ in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45; and~~[-]~~

(b) Does not mean the use or reuse of biosolids that are subject to the provisions of 401 KAR 45:105.

(2) "Biosolids" is defined by KRS 224.50-765(1).

(3) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The categories of certified operator shall be:

(a) Composting operator~~[-]~~;

(b) Interim operator~~[-]~~;

(c) Landfarming operator~~[-]~~; and

(d) Landfill operator.

(4)~~[(3)]~~ "Closure" is defined by KRS 224.1-010(4).

(5)~~[(4)]~~ "Coal combustion by-products":

(a) Means special waste including fly ash, bottom ash, or scrubber sludge residues produced by coal-fired electrical generating units~~[-]~~; and

(b) Does not mean residues of refuse derived fuels such as municipal waste, tires, or solvents.

(6)~~[(5)]~~ "Composting" is defined by KRS 224.1-010(6).~~[Means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and that stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting:~~

(a) May include a process that creates an anaerobic zone within the composting material; and

(b) Does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.]

(7)~~[(6)]~~ "Composting operator" means a certified operator who is ~~[the individual]~~ responsible for ensuring compliance with all permit conditions at a composting facility and who is ~~[reasonably]~~ available to the facility during operations.

(8)~~[(7)]~~ "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(9)~~[(8)]~~ "Construction and Operation~~[Construction/operation]~~ permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(10)~~[(9)]~~ "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(11)~~[(40)]~~ "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(12)~~[(44)]~~ "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator pursuant to 401 KAR 45:090, Section 11.

(13)(a)~~[(42)]~~ "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by methods contained in this chapter~~[any method]~~ for purposes of disposal.

(b) Disposal~~[It]~~ can be on any piece or pieces of land, subject to approval, and may~~[can]~~ improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and does~~[will]~~ not disturb the soil below three (3) feet from the surface.

(14)~~[(43)]~~ "Landfarming operator" means a certified operator who is ~~[the individual]~~ responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is ~~[reasonably]~~ available to be at the site or facility during operations.

(15)~~[(44)]~~ "Landfill operator" means a certified operator who ~~has~~ [is the individual with] primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is ~~[reasonably]~~ available to be at the site or facility during operations.

(16)~~[(45)]~~ "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(17) "Responsible corporate officer" means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(b) The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or

(c) A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications.

(18)~~[(46)]~~ "Special waste":

(a) Is defined~~[established]~~ by KRS 224.50-760(1)(a); and

(b) Does not include special wastes that are coal combustion residuals governed by 401 KAR Chapter 46.

(19)~~[(47)]~~ "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

[Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.]

Table 1. Acronyms and Abbreviations	
C.F.R.	Code of Federal Regulations
EPA	Environmental Protection Agency

FDIC	Federal Deposit Insurance Corporation
FSLIC	Federal Savings and Loan Insurance Corporation
KAR	Kentucky Administrative Regulations
KPDES	Kentucky Pollutant Discharge Elimination System
KRS	Kentucky Revised Statutes
NCUA	National Credit Union Administration
NPDES	National Pollutant Discharge Elimination System
PCB	Polychlorinated Biphenyls
POTW	Publicly Owned Treatment Works
U.S.C.	United States Code
USDA	United States Department of Agriculture
USGS	United States Geological Survey

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines term necessary for the correct interpretation on the administrative regulations in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for a correct understanding of the requirements in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation defines special waste terms for Chapter 45.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the terms that will aid the regulated community in understanding the requirements in this chapter.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a new term and makes other corrections to comply with the drafting requirements of KRS Chapter

13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly interpret the requirements of 401 KAR Chapter 45 related to biosolids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adding the statutory term of "Biosolids" as defined in KRS 224.50-765.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will define the term "biosolids" in order to aid the regulated community in the correct interpretation of 401 KAR 45:105 which was promulgated in order to implement the requirement of KRS 224.50-765.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 simply need to use the new definition in this amendment to correctly interpret the administrative regulations in this chapter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to this process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by using the defined term to interpret the new administrative regulation (401 KAR 45:105) related to the management of biosolids.

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement this new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental

Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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), 224.40-305, 224.50-760(1)(d)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply the insertion of a definition that will be most impactful in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:020. Types of special waste permits.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate[adopt] administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or allow[permit] the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation establishes[sets forth] the classification of special waste sites or facilities for permitting[~~purposes~~].

Section 1. Overview. This administrative regulation establishes[sets forth] the type of permit a person is required to obtain prior to engaging in the disposal or management of special waste.~~[The transition period for complying with requirements of this chapter is contained in Section 4 of this administrative regulation.]~~

Section 2. Permit Types. This section establishes the following types of special waste site or facility permits:

(1) Formal permit. A formal permitting process is established that includes the submittal of a complete application, review of the application, and permit issuance or denial by the cabinet. A formal permit shall be obtained by persons engaged in the following activities:

(a) Special waste landfill. This is a category of waste site or facility designed and operated to accept for disposal a limited number of special wastes that are characterizable. The administrative and technical requirements for a special waste landfill are found in 401 KAR 45:030 and 401 KAR 45:110.

(b) Landfarming and composting. This is a category of special waste site or facility that landfarms or composts special waste.

1. A special waste ~~[landfarming or]~~composting site or facility that manages municipal wastewater treatment sludge is classified as a Type A or Type B facility according to the metal concentrations of the sludge and volume of sludge accepted at the site as specified in Section 2 of 401 KAR 45:100. A Type B facility may be exempt from some of the requirements of a formal permit as specified in Section 2 of 401 KAR 45:100.

2. Other special waste landfarming or composting is the category of site or facility that manages special waste, other than municipal wastewater treatment sludge, which is classified using parameters set forth in this administrative regulation and additional parameters based upon the source, chemical and physical characteristics of the waste, volume of waste, and its potential for adverse impact on human health or the environment. Other special waste landfarming or composting facilities shall be classified as either a Type A or Type B facility in accordance with Section 2 of 401 KAR 45:100.

3. Landfarming of biosolids is the application to the land of sludges from the treatment of domestic sewage or sewage sludge from a treatment facility and is managed in accordance with 401 KAR 45:105.

(2) Permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:060 that are deemed to have a permit without the owner or operator having made application or registration with the cabinet.

(3) Registered permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:070 that are deemed to have a permit without further

action by the cabinet upon acknowledgement by the cabinet of a complete registration by the owner or operator.

(4) Emergency permit. This is a category of special waste site or facility permit for the short-term storage or disposal of special waste generated during certain emergency situations. These permits are issued in accordance with 401 KAR 45:135.

(5) Research, development, and demonstration permit. This is a category of special waste or facility permit to demonstrate unproven technology. These permits are issued in accordance with 401 KAR 45:135.

Section 3. Special Waste Formal Permit Phases. The application process to obtain a formal permit shall consist of two (2) phases as follows:

(1) Upon approval of a permit application, the cabinet shall issue a construction permit that authorizes the owner or operator to commence construction of a site or facility in accordance with the terms and conditions of the construction permit; and

(2) Upon completion of the construction phase the owner or operator shall notify the cabinet that construction of the special waste site or facility is complete, in accordance with Section 1(11) of 401 KAR 45:140, that construction of the site or facility is complete. The cabinet shall inspect the site or facility to ensure compliance with all construction permit requirements, and, upon execution of financial assurance and the submission of a fee specified in Section 2(1)(d) of 401 KAR 45:250, the cabinet shall issue a construction and operation ~~construction/operation~~ permit.

~~[Section 4. Transition from Solid Waste Site or Facility Permits to Special Waste Site or Facility Permits:~~

~~(1) Within six (6) months of June 24, 1992, any person that possesses a solid waste landfill or landfarming permit that disposes of special waste as defined in KRS 224.50-760 issued before the effective date of this administrative regulation shall file a notice with the cabinet that states the operator's intent to meet the requirements of this chapter by July 1, 1993.~~

~~(2) After July 1, 1993, no person shall operate a special waste landfill or special waste landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:~~

~~(a) The facility owner or operator possesses a permit issued or continued under 401 KAR Chapters 47 and 48;~~

~~(b) The facility owner or operator possesses a permit issued or modified to meet the technical standards of this chapter;~~

~~(c) An application for a permit modification for closure or conversion to a different classification under this chapter has been filed with the cabinet within twelve (12) months of June 24, 1992, and the cabinet has not yet rendered a decision with respect to the complete application; or~~

~~(3) An owner or operator of a site or facility that was previously regulated as a solid waste registered permit by rule, but is now regulated as a special waste registered permit by rule under 401 KAR 45:070, shall be deemed to have a special waste registered permit by rule without having to resubmit a registration.~~

~~(4) An owner or operator of a site or facility that was previously regulated as a solid waste permit by rule, but is now regulated as a special waste registered permit by rule, shall register with the cabinet in accordance with 401 KAR 45:070 by December 31, 1992.~~

~~Section 5. Solid Waste Facility Applications Pending on the Effective Date of this Administrative Regulation. Applications pending on June 24, 1992, shall be revised to meet all requirements of this chapter prior to being determined technically complete.~~

~~Section 6. Closure Criteria for Sites or Facilities Not Applying for a Special Waste Permit. Any person disposing of special waste under a solid waste landfill or landfarming permit issued before June 24, 1992, who elects to cease operation at the facility by July 1, 1993, shall comply with the closure requirements of the solid waste permit and 401 KAR Chapters 47 and 48.]~~

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the types of permits that are available to individuals that manage special wastes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for individuals to know the types of permits that may be required for management of special wastes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation lists the types of permits that are available to individuals that manage special wastes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effective administration of the statutes by listing the types of permits available to manage special wastes and providing information on the phases of each permit type.

(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 clarifies that the regulation of biosolids is captured in 401 KAR 45:105 is not part of the landfarming requirements of non-wastewater treatment plant sludges.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to direct readers to the correct location for the regulation of biosolids due the passage of SB 213 from the 2023 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying that regulation of biosolids is contained in 401 KAR 45:105 and is in conformance with KRS 224.50-765.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clearly directs individuals interested in managing wastewater treatment plant sludges to 401 KAR 45:105 and also clarifies that the regulation of those same solids are no

longer part of the requirements in 401 KAR 45:100.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 simply use the amended information in this administrative regulation to identify the location of requirements related to the management of biosolids as defined in KRS 224.50-765.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to this process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by knowing the location of information related to the management of biosolids.

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

(a) Initially: There will not be a cost to the agency to implement this amendment.

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement this new biosolids process that is established in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The cabinet currently permits wastewater treatment plant sludges for land application and composting. The new process will use the same personnel and funding.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to

explain the fiscal impact of the administrative regulation.

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply directs applicants to 401 KAR 45:105 for the requirements of land applying biosolids. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 45:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate[adopt] administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or allow[permit] the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This administrative regulation establishes[sets forth] timetables for the review and determination of special waste permit applications and registrations but does not establish permitting timetables for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility pursuant to 401 KAR 45:105.

Section 1. Submittal of Permit Applications and Registrations.

(1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall submit all information required in the applicable permit application[have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45].

Section 2. Administrative Completeness Determination.

(1)(a) No application or registration shall be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by the applicable forms[KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet].

(b) An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean [that the application is complete in every detail, nor shall it mean] that any aspect of the application is technically sufficient[-or approvable].

(2) Within forty-five (45) calendar days of receipt of the application or registration the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) ~~[If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.~~

(b) If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of all the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, unless the cabinet approves a longer time period in writing[is approved by the cabinet].

(b)(e) The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or

registration is administratively complete.

1. If the applicant or registrant renders the application or registration administratively complete within the specified timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.

2.a. If the cabinet determines that the application or registration is not administratively complete at the end of the period specified in this subsection, the cabinet shall make a written determination to deny the permit. The reason the application or registration[with the stated reason that the application or registration, in its current form,] fails to comply with the requirement to submit a complete application shall be provided to the applicant or registrant.

b. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered a new submittal[as if not previously submitted] for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination.

(1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the following timetables:

(a) Special Waste Formal Permit: 180 calendar days.

(b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.

(c) Registered Permit-by-rule: ninety (90) calendar days.

(d) Research, Development, and Demonstration Permit: 180 calendar days.

(e) Special Waste Permit modifications: 180 calendar days.

(f) Permit transfer: 180 calendar days.

(g) Permit renewal: ninety (90) calendar days.

(h) Permit by rule applicability determinations:[Any other permit action not specifically set forth in this section:] ninety (90) calendar days.

(2) The timetables specified in subsection (1) ~~[of this section]~~ may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods specified in Section 3 of this administrative regulation shall not run during the following intervals:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a completed[complete] response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant.

(2) If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished.

(3) The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes

and administrative regulations, based on all applications being considered and their filing dates.

[Section 6. Applicability Dates:

(1) The provisions of this administrative regulation shall apply to applications and registrations received after April 28, 1993.

~~(2)(a) The provisions of this administrative regulation shall not apply to applications and registration pending on April 28, 1993 unless, within ninety (90) days of April 28, 1993, the applicant or registrant submits written notification to the cabinet that the applicant or registrant desires to have the application or registration subject to this administrative regulation.~~

~~(b) If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall not be subject to the provisions of this administrative regulation.~~

~~(c) Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.]~~

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes timetables for the review and determination of special waste permit applications and registrations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish review timetables for the permits in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative

regulation establishes the permit review timetables for all of the special waste permitting actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the permit review timetables for special waste permitting actions in Chapter 45.

(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 clarifies that the timetables and process established in this administrative regulation do not apply to the management of biosolids and makes other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to direct applicants for the land application of biosolids to 401 KAR 45:105 where the permitting process and review timetables are established.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by directing the applicant for a biosolid land application permit to 401 KAR 45:105 for the permitting process and requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will direct applicants to 401 KAR 45:105 for the permitting timetables that are applicable to the management of biosolids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 only need to review 401 KAR 45:105 for permitting process and review timetables.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to this process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having an administrative regulation that contains nearly all of the information related to the management of biosolids.

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement this new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for

application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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), 224.40-305, 224.10-220.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. This administrative regulation is related to review timetables for permits and does not generate any funds. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees in 401 KAR 45:250 will continue after these amendments are effective.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The administrative regulation establishes timetables for review of permits and does not impact costs.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of the definition of biosolids will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation simply indicates that the timetables for permit review do not apply to the permit review of biosolids. Those timeframes are in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200-146.990, 224.1[224.04], 224.10, 224.40, 224.50, 224.70, 224.99, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate[adopt] administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or allow[permit] the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities. This administrative regulation establishes the procedures for obtaining a permit for a special waste site or facility. This administrative regulation does not establish permitting or permit application standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility those requirements are contained in 401 KAR 45:105.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit.

(1) All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information specified in this administrative regulation. The applicant shall submit the application on a form incorporated by reference[approved] by the cabinet and signed in accordance with Section 10 of this administrative regulation. Engineering drawings, specifications and studies shall be certified by a professional engineer registered in Kentucky.

(2) The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

(1) Except as otherwise provided in this section, any person managing special waste shall maintain a special waste site or facility permit as specified in Section 2 of 401 KAR 45:020.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as

a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations ~~including[such as]:~~

1. A spill of a special waste;
2. An imminent and substantial threat of a spill of special waste;

or

3. A spill of a material which, when spilled, becomes a special waste.

(3) Specific inclusions.

~~[(a) Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit.~~

~~[(b)] Any person who initiates or continues special waste containment or disposal activities after emergency actions are complete[situations are taken] shall be subject to all applicable requirements of this chapter for those activities.~~

~~[(4)(a) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.~~

~~[(b) A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.~~

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include ~~[but are not limited to]:~~

(1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);

(2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);

(3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;

(4) KRS 146.200 to 146.360 and 400 KAR Chapter 4~~[401 KAR Chapters 4 and 5]~~ (the Wild Rivers System); and

(5) KRS 146.410 to 146.990 and 400 Chapters 2 and 3~~[KAR Title 400]~~ (the Nature Preserves System).

Section 4. Limitations of a Permit.

(1) A permit may be modified or revoked during its term for cause as ~~established[set forth]~~ in 401 KAR 45:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit shall not convey any property rights or any exclusive privilege.

(3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. No person shall deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

~~(1) [Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before June 24, 1992;~~

~~(2)]~~ Qualified for a permit-by-rule in accordance with 401 KAR 45:060;

~~(2)](3)]~~ Obtained[Qualified] for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100, Section 8;

~~(3)](4)]~~ Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or

~~(4)](5)]~~ Obtained a special waste formal permit in accordance with this chapter.

Section 6. Permit Required.

(1) No person shall engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as specified in this chapter.

(2) No person shall engage in the management, processing, or

disposal of special waste and solid waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 47 and 48.

(3) No person shall engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as specified in 401 KAR ~~Chapter~~~~[Chapters 31 to]~~ 39.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 401 KAR 45:110.

Section 7. New Special Waste Sites or Facilities.

(1) No person shall begin physical construction of a new special waste site or facility without having received a special ~~[or solid]~~ waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information specified in Section 8 of this administrative regulation.

(3) The site shall be designed in accordance with the applicable requirements of this chapter.

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

~~[(5) The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.~~

~~[(6) If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.]~~

Section 8. Application for a Special Waste Formal Permit.

(1) Any person who is required to have a special waste site or facility permit under this chapter shall sign and submit a complete application to the cabinet. ~~[The application forms are:]~~

~~(a) Persons applying for a special waste landfill permit shall use form [DEP-7094A entitled-]"Application for a Special Waste Landfill Permit" form DEP 7094A.(November 2016). The requirements contained in the special waste landfill permit application are incorporated in this administrative regulation by reference.] The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of this chapter.[The permit application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6746, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]~~

~~(b) Persons applying for a special waste landfarming facility permit for the land application of special waste other than biosolids shall use [form-DEP-7021A entitled-]"Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and(November 2016), and form DEP-7021B entitled-]"Application for a Special Waste Landfarming Facility Permit" form DEP 7021B.(November 2016). The requirements contained in forms DEP-7021A and DEP-7021B are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6746, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste; and]~~

~~(c) Persons applying for a special waste composting facility permit shall use [form-DEP-7024A entitled-]"Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and(November 2016), and form DEP-7094D entitled-]"Application for a Special Waste Composting Facility Permit" form DEP7094D](November 2016). The requirements contained in forms~~

DEP 7021A and DEP 7094D are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020, Section 2 that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and this chapter.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, ~~[form DEP 7094J entitled]~~ "Past Performance Information" ~~form DEP 7094J~~ (November 2016). The requirements contained in ~~form DEP 7094J~~ are incorporated in this administrative regulation by reference. The past performance information is collected in accordance with the requirements of KRS 224.40-330(1) and (3). The information form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, 401 KAR 45:025 and 401 KAR 45:100 or 401 KAR 45:110, and 401 KAR 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information in accordance with the timetables established in 401 KAR 45:025. The cabinet shall notify the applicant in writing when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under Section 4 of 401 KAR 45:050.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken ~~[under the appropriate statutory regulatory provisions]~~.

(7) If the cabinet determines that a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require such additional information as it deems necessary in order to make a final determination to issue a permit or deny the permit application as provided in paragraph (1)(a) of this section.

Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements specified in this chapter and KRS 224.50-760 [Chapter 224].

(2)(a) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny and ~~[A notice of intent to deny the permit application]~~ shall be subject to the public information process as specified in 401 KAR 45:050.

(b) If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the

permit, a draft construction permit shall be prepared containing the following information:

(a) The proposed design and specifications; and
(b) Any conditions in accordance with Section 2 of 401 KAR 45:140.

(4) The draft construction permit shall be based on the administrative record outlined in Section 3 of 401 KAR 45:050.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under Section 1 of 401 KAR 45:040, shall be subject to the public information process as specified in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application, ~~[and]~~ the requirements of this chapter, and KRS 224.50-760 [Chapter 224].

(10) The applicant shall maintain a construction permit in full force and effect until the construction and operation ~~[construction/operation]~~ permit is issued by the cabinet.

(11) A construction and operation ~~[construction/operation]~~ permit shall be issued by the cabinet when:

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; and

(b) A representative of the cabinet has inspected the site and verified in writing to the applicant, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit subject to specific conditions which include ~~[, but are not limited to,]~~

(a) Types of wastes ~~[which may be]~~ accepted or disposed ~~[,]~~

(b) Special operating conditions ~~[,]~~

(c) Schedules for compliance for corrective action ~~[,]~~ and

(d) The issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports.

(1) Applications. All permit applications and modifications shall be signed as follows:

(a) A responsible corporate officer shall sign permit applications and modification on behalf of a corporation. If the signature is by a person that meets the requirements of 401 KAR 45:010 Section 1(17)(c) then a copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification. ~~[For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:~~

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or

3. A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.]

(b) A general partner or the proprietor for a partnership or sole proprietorship~~[-by a general partner or the proprietor, respectively];~~

(c) A general partner for a limited partnership~~[-by a general partner];~~ or

(d) A principal executive officer for a municipality or state, federal, or other public agency~~[-by a principal executive officer]~~. For purposes of this paragraph, a principal executive officer shall include~~[includes]~~:

1. The ranking elected official;

2. The chief executive officer of the agency;

3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

4. A person authorized, in writing, to sign on behalf of a person described in subparagraphs 1, 2, and 3 of this paragraph. The written authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position.

(2) Reports.

(a) All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person.

(b) A person shall be a duly authorized representative only if:

1.~~[(a)]~~ The authorization is made in writing by a person described in subsection (1) of this section;

2.~~[(b)]~~ The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position; and

3.~~[(c)]~~ The written authorization is submitted to the cabinet prior to or together with any reports.

(3) Changes to authorization. If an authorization under subsection (2)~~(b)~~ of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, then a new authorization satisfying the requirements of subsection (2)~~(b)~~ of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and key personnel, as defined in KRS 224.1-010(43)~~[224.01-010(44)]~~, of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits.

(1)~~(a)~~ Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet.

(b) Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or this chapter.

(2) Special waste site or facility construction permits shall be effective for a fixed term off[not to exceed] five (5) years.

(3) Special waste landfill construction and

operation~~[construction/operation]~~ permits shall be issued for the anticipated life of the facility.~~[-A shorter period may be specified by the cabinet.]~~

(4) Special waste landfarming facility construction and operation~~[construction/operation]~~ permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary to maintain compliance with this chapter.

(5) For registered permit by rule or permits by rule~~[permits]~~ issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of those permits~~[the permit]~~ any time prior to their~~[the]~~ expiration date~~[-of the permit]~~. Issued permits shall~~[may]~~ be reevaluated in accordance with the requirements of this chapter~~[-and KRS Chapter 224]~~, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040.

(6) Modification of term of permit. Except as provided in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsections (2) to (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) to (4) of this section.

Section 13. Renewal of Formal Permits.

(1) Any application to renew a construction or construction and operation~~[construction/operation]~~ permit shall be submitted to the cabinet at least 180 days before the expiration date of the current permit. Persons applying for the renewal of a permit shall use [form DEP 7095 entitled-]"Application for Renewal of a Formal Permit" form DEP 7095 (November 2016)]~~[-The requirements contained in the renewal application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

(2) Applications to renew a construction or construction and operation~~[construction/operation]~~ permit shall be subject to a review in accordance with the requirements of this chapter.

(3) The cabinet, in issuing a renewal, shall consider whether all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions to ensure compliance with this chapter~~[when deemed appropriate]~~.

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted an~~[a timely]~~ application for renewal of a permit pursuant to~~[under]~~ Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons pursuant to the requirements of this chapter.

(2) Effect. Permits continued under this section shall remain in full force and effect until the renewal application has been issued.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any such claim shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application For a Special Waste Landfill Permit", form DEP 7094A, February 2023;

(b) "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit", form DEP 7021A, February 2023;

(c) "Application for a Special Waste Landfarming Facility Permit", form DEP 7021B, February 2023;

(d) "Application for a Special Waste Composting Facility Permit", form DEP 7094D, August 2023;

(e) "Past Performance Information", form DEP 7094J, November 2016; and

(f) "Application for Renewal of a Formal Permit", form DEP 7095, November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes the permit review process for the special waste permits in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the regulated community to know the permitting process and the expectations associated with the process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes the permitting process for all special waste permitting types in Chapter 45.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the permitting process for special waste permits.

(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 clarifies that the permitting processes that are established in this administrative regulation do not apply to wastewater treatment plant sludges. The amendments make other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly direct interested individuals to 401 KAR 45:105 where the permitting process is established for biosolids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing a formal permitting process for biosolids as required by KRS 224.50-765.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that the permitting process for the management of biosolids is established in 401 KAR 45:105.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 refer to 401 KAR 45:105 to find the permitting process for biosolids.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that this permitting administrative regulation does not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply the insertion of language clarifying that this permitting administrative regulation does not apply to the permitting of the land application of biosolids. That process is established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the requirements for modification, transfer and revocation of special waste permits but does not establish standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility that are regulated pursuant to 401 KAR 45:105.

Section 1. Modification of Permits. (1) A special waste site or facility permit may be modified during its term in accordance with this administrative regulation.

(a) If a permit is modified, only the conditions subject to modification shall be reopened. A permit modification shall be subject to public notice unless the cabinet determines the modification does not present a threat to human health and the environment[may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application].

(b) An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(2)[(4)] Modification of formal permits. Modifications requested

by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet that is appropriate for the type of facility being modified. The permittee shall use:

(a) "Application for a Special Waste Landfill Permit," form DEP7094A;

(b) "Application for a Special Waste Landfarming Facility Permit" form DEP7021B;

(c) "Application for a Special Waste Composting Facility" form DEP 7094D; or

(d) "Application for a Research, Development, and Demonstration Permit" form DEP 7094B.

(3) Forms in paragraphs (a) through (c) of subsection (2) are incorporated by reference in 401 KAR 45:030. The form in paragraph (d) of subsection (2) is incorporated by reference in 401 KAR 45:135. ~~[form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2 of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.]~~

(4) [(2)] Modification of a registered permit-by-rule. Registrants requesting a modification shall submit a new registration form in accordance with Section 4 of 401 KAR 45:070.

(5) [(3)] Causes for modification. The following paragraphs ~~list~~ are causes for modification of formal permits by the cabinet:

(a) Material and substantial alterations or additions to the permitted special waste site or facility are being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan is required under this chapter;

(e) The cabinet receives notification of expected closure and finds that one (1) or more ~~any~~ of the permit conditions are no longer warranted;

(f) The cabinet adjusts the level of financial responsibility required pursuant to 401 KAR 45:080;

(g) The corrective action program specified in the permit has not brought the waste site or facility into compliance with the groundwater protection standards ~~[within a reasonable period of time]~~;

(h) To include a monitoring program meeting the requirements of 401 KAR 45:160;

(i) To approve a corrective action plan required by 401 KAR 45:160;

(j) To include conditions applicable in new or amended statutes and administrative regulations;

(k) Modification is necessary to protect human health or the environment;

(l) To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40;

(m) Ownership of the special waste site or facility changes;

(n) To expand the capacity of a special waste site or facility; or

(o) To add a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification.

(1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet shall determine ~~decides~~ whether the request is justified in accordance with Section 1 of this administrative regulation ~~[or for other good cause shown]~~. If the cabinet determines not to modify the permit, it

shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this administrative regulation, then the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification is subject to public notice requirements, the permittee shall publish a notice in accordance with Section 4 of 401 KAR 45:050.

(4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.

(5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.

(6) The owners or operators of a special waste site or facility may request a hearing pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.

(7) All terms of an existing permit remain in effect during the permit modification request.

(8) A permit modification requesting a horizontal expansion shall be subject to the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared under Sections 8 and 9 of 401 KAR 45:030, and shall be based on the administrative record required by Section 3 of 401 KAR 45:050.

Section 3. Transfer of Permits.

(1) A permit is not transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application is required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(2) A person requesting to transfer a formal permit for an existing special waste site or facility shall ~~submit~~ use form DEP 7094C entitled "Application To Transfer Special Waste Permit" form DEP 7094C. ~~(November 2016). The requirements contained in the transfer application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6746, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.~~

(3) The cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.

(4) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame specified in subsection (3) of this section. Failure to submit ~~any required~~ information noted by the cabinet related to the deficiencies within ninety (90) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

(5) If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with Section 4 of 401 KAR 45:050.

(6) After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with Sections 5 to 8 of 401 KAR 45:050.

(7) After the close of the public comment period, the cabinet shall make a final decision on the transfer application.

(8) A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with Section 2 of 401 KAR 45:070.

Section 4. Modification, Suspension and Revocation of a Permit. The cabinet may modify, suspend, or revoke a permit issued under this chapter for the items listed in subsections (1) through (7). ~~[-]~~

- (1) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031.
- (2) Aiding, abetting, or permitting the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031.
- (3) Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment.
- (4) Violations of a condition or a variance of the special waste site or facility permit.
- (5) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet.
- (6) Failure to comply with an order issued by the cabinet.
- (7) The facility is transferred to another person without prior approval of the cabinet.
- (8) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.
- (9) If a permit is revoked, the owner or operator may reapply.
- (10) Owners or operators of special waste sites or facilities may file a request for a hearing pursuant to KRS 224.10-420 upon revocation of the permit.

Section 5. Incorporation by Reference.

- (1) "Application To Transfer Special Waste Permit", form DEP 7094C (November 2016), is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.
- (3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

- (1) Provide a brief summary of:
- (a) What this administrative regulation does: This administrative

regulation establishes the process for the modification, transfer, and revocation of special waste permits in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the regulated community to know the process to modify, transfer, and revoke special waste permits and the expectations associated with those processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes the process for the modification, transfer, and revocation of special waste permits in 401 KAR Chapter 45.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the regulated community the information to properly modify and transfer a permit. It also provides information on the revocation of permits by the cabinet.

(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 clarifies that the processes that are established in this administrative regulation do not apply to wastewater treatment plant sludges. The amendments make other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly direct interested individuals to 401 KAR 45:105 where the modification, transfer, and revocation information for biosolid permits can be found.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing procedures for the modification, transfer and revocation of a formal permit of biosolids as required by KRS 224.50-765.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that the process to modify, transfer, or revoke biosolid permits is established in 401 KAR 45:105.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by 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 refer to 401 KAR 45:105 to find information on modification, transferring, or having biosolid permits revoked.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

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

The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.40-330, 224.50-760, 224.50-765.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet

does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that this permitting administrative regulation does not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply the insertion of language clarifying that this regulation does not apply to the land application of biosolids. Those processes are established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:050. Public information procedures for special waste site or facility permits.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.90

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth public information procedures. This administrative regulation does not establish the public information procedures for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility.

Section 1. Applicability.

(1) Public information procedures shall apply to applicants for the following permits~~each person seeking~~:

- (a) A new special waste landfill permit;
- (b) A horizontal expansion of a special waste landfill;
- (c) A Type A special waste landfarming or composting site or facility permit;
- (d) A research, development, and demonstration permit;
- (e) A transfer of ownership of a site facility with a formal special waste permit that originally required a public notice; and
- (f) Approval of a new waste that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for

other permit actions or modifications if it determines that a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet.

(1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly ~~state[set forth]~~ the principal facts and the significant factual, legal, methodological, and policy questions considered in processing the permit application. ~~[The cabinet shall send this fact sheet to the applicant and, on request, to any other person.]~~

(2) The fact sheet shall include:

(a) A brief description of the type of facility or activity that is the subject of the draft permit;

(b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;

(c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this administrative regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments shall be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures including public participation in the final decision; and

(f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits.

(1) The provisions of a draft permit prepared by the cabinet under Section 9 of 401 KAR 45:030 shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application;

(c) The fact sheet prepared in accordance with Section 2 of this administrative regulation;

(d) All documents cited in the fact sheet; and

(e) Other documents contained in the supporting file for the proposed permit.

(3) Material readily available at the cabinet's office need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. This includes published material that is generally available, and that is included in the administrative record.

Section 4. Public Notice.

(1)(a) Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located.

(b) Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain the following information:

1. ~~[(a)]~~ Name and address of the cabinet's office processing the permit action for which notice is being given;

2. ~~[(b)]~~ Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;

3. ~~[(c)]~~ A brief description of the business conducted or activity described in the permit application;

4. ~~[(d)]~~ A description of the proposed location of the special waste site or facility, including a description of the primary access roads;

5. ~~[(e)]~~ Name, address, and telephone number of a person from whom interested persons may obtain further information; and

6. ~~[(f)]~~ The following statement: "Within thirty (30) days of the

publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting"; and

~~(g) Any additional information required by the cabinet.~~

(2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.

(3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly, major, local newspaper of general circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain the following:

(a) The information required by subsection ~~(1)(b)1. to 6. [(1)(a) to (e)]~~ of this section;

(b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;

(c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;

(d) The location of the administrative record required by Section 3 of this administrative regulation, including:

1. A local repository in the county in which the site or facility is proposed; and

2. The times at which the record is open for public inspection; and

3. A statement that all data submitted by the applicant is available as part of the administrative record; and

(e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to Section 6 of 401 KAR 45:050."; and

~~(f) Any additional information required by the cabinet.~~

(4) Public notices may describe more than one (1) permit or permit action.

(5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.

(6) The cabinet shall distribute the public notice specified in subsection (1) of this section to the following:

(a) The Kentucky Department of Fish and Wildlife Resources; and

(b) The U.S. Fish and Wildlife Agency; and

(c) The Advisory Council on Historic Preservation; and

(d) The State Historic Preservation Officer; and

(e) Other appropriate government authorities, including any other affected states;

(f) ~~[(b)]~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(g) ~~[(e)]~~ Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility.

(7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to the following individuals:

(a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and

(b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings.

(1) The cabinet may hold a public hearing on the basis of written request or when a significant degree of public interest exists concerning a special waste site or facility permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.

(2) Whenever a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required.

(4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period.

(1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:

(a) Prepare a new draft permit; or

(b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

Section 8. Response to Comments.

(1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all [significant] comments on the draft permit raised during the public comment period, or during any public hearing.

(2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county which the site or facility is proposed.

Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 commences upon the completion of the public comment and hearing period as provided in Sections 5, 6, and 7 of this administrative regulation and upon the cabinet's rendering of a final permit decision in accordance with Section 9 of 401 KAR 45:030.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes public information procedures for special waste permits in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the regulated community to know the public notice procedures for permits in 401 KAR Chapter 45.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative contains the information for public notice for special wastes in 401 KAR Chapter 45.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by detailing public information procedures for special waste permits.

(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 clarifies that public information procedures do not apply to biosolid land application. KRS 224.50-765 directs the cabinet to regulate biosolid land application in conformance with 40 C.F.R. Part 503. 40 C.F.R. Part 503 doesn't have broad public notice requirements. The amendments make other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to identify that the public notice requirements associated with this administrative regulation do not apply to 401 KAR 45:105.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying that there are not public notice requirements for the land application of biosolids contained in this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity to the permitting process by letting the regulated community know that the public notice provisions in 401 KAR 45:050 do not apply to the land application of biosolids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 refer to 401 KAR 45:105 to find the permitting process for biosolids. However, this amendment lets the regulated entity know that the public notice

requirements have not changed for anything other than the biosolids (sludges from wastewater treatment plants).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and there will be no public notice requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105) as well as a more streamlined approach.

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

(a) Initially: There will not be a cost to the agency to implement this amendment.

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue as it relates only to the public notice process. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent

years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that the public notice provisions in this administrative regulation do not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply the insertion of language clarifying that the public notice provisions in this administrative regulation do not apply to the permitting of the land application of biosolids. That permitting process is established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:080. Financial requirements and bonds for special waste facilities.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites

or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities but does not establish financial assurance requirements for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility. Information related to the permitting of biosolids is located in 401 KAR 45:105.

Section 1. Applicability. The financial assurance criteria and bond requirements apply to the owner or operator of special waste landfills, Type A landfarming and composting sites or facilities, and research, development and demonstration sites or facilities, and other sites or facilities if required by the cabinet as part of a remedy or requirement set forth in a resolution of permit violations.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements that are applicable depending on the type of site or facility:

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if changes to the closure plan or special waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this administrative regulation if the owner or operator[he] can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that the owner or operator[he] has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Postclosure Cost Estimate.

(1)(a) The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of postclosure monitoring and maintenance of the special waste site or facility in accordance with the postclosure plan developed to satisfy the postclosure requirements of Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

(b) The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this administrative regulation shall be calculated by multiplying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this administrative regulation if the owner or operator[he] can demonstrate to the satisfaction of the

cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until [he has been] notified by the cabinet that the owner or operator[he] has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms specified in Section 7 or 10 of this administrative regulation, which satisfies the [following] criteria in subsections (1) through (3) of this section. The financial assurance mechanism shall:

(1) ~~[The financial assurance mechanism shall.]~~ Ensure that the amount of funds is sufficient to cover the costs of closure and postclosure care;

(2) ~~[The financial assurance mechanisms shall.]~~ Ensure that funds shall be available in a timely fashion; and

(3) ~~[The financial assurance mechanisms shall.]~~ Guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility subject to this administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility subject to ~~this[the]~~ administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this administrative regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 7. Performance Agreement~~[Bond]~~.

(1) Before the cabinet shall issue a construction and operation[construction/operation] permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this administrative regulation shall complete a performance agreement form on "Performance Agreement" DWM 4650, ~~[bond on Form DEP 7094E entitled "Performance Bond" (November 2016). The requirements contained in the performance bond are incorporated in this administrative regulation by reference. The performance bond may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]~~

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond form submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit submitted on form ~~[as set forth on Form DEP 7094F entitled]~~ "Irrevocable Letter of Credit" DWM 4670; ~~or (November 2016). The requirements contained in the irrevocable letter of credit are incorporated in this administrative regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]~~

(c) An escrow agreement submitted on form [as set forth on Form DEP 7094G entitled] "Escrow Agreement" DWM 4665. (November 2016). The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;

(3) Other financial assurance as specified in Section 10 of this administrative regulation.]

Section 8. Release of Financial Assurance.

(1) Financial assurance posted to assure proper closure of a special waste landfilling or composting facility shall be released in accordance with Section 4 of 401 KAR 45:100.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with Section 5 of 401 KAR 45:110.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and postclosure care of the facility. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility which is exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Performance Agreement", form DWM 4650, (February 2019);

(b) "Irrevocable Letter of Credit" form DWM 4670; (February 2019); and

(c) "Escrow Agreement", form DWM 4665; (February 2019).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require financial coverage for the closure and postclosure of a special waste site or facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes financial assurance requirements for special waste sites and facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the regulated community information on financial assurance for the closure and postclosure requirements associated with special waste sites and facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that there is no financial assurance required for the management of biosolids. The amendments make other corrections to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly direct interested individuals to 401 KAR 45:105 where information for biosolid permits can be found and to clarify the financial assurance requirements related to other types of special waste permits do not apply to biosolid permits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by establishing a formal permitting process for biosolids as required by KRS 224.50-765. This amendment clarifies that biosolid permits do not require financial assurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that financial assurance for the closure and postclosure of a special waste site or facility is not required for the management of biosolids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 amendment clarifies that public notice is not part of the permitting process. The regulated entities will need to refer to 401 KAR 45:105 to find information on the permitting of

biosolids.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

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

(a) Initially: There will not be a cost to the agency to implement this amendment.

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are not any new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.40-330, 224.50-760, 224.50-765.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that public notice does not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity. The current process of land applying type B wastewater treatment sludges does not require public notice either. Therefore, no saving will be realized

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply a statement clarifying that this regulation does not apply to the land application of biosolids. Those processes are established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:100. Landfarming and composting of special waste.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.50, 7 U.S.C. 136 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.50-760, 7 U.S.C. 136 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a

permit. ~~This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.~~ This administrative regulation sets forth requirements for special waste landfarming sites or facilities and special waste composting sites or facilities but does not include landfarming of biosolids.

Section 1. Applicability. (1) The requirements in this administrative regulation apply to any person disposing of or treating special waste by:

(a) Composting; or

(b) Landfarming of special wastes that are not biosolids. ~~landfarming or composting.~~

(2) Landfarming of biosolids shall be regulated in accordance with 401 KAR 45:105.

Section 2. Classifications of Special Waste Landfarming and Composting Sites or Facilities. A special waste landfarming or composting site or facility is classified as a Type A or Type B facility after the cabinet reviews the application filed pursuant to 401 KAR 45:030 Section 8(1)(b). ~~Notice of Intent filed pursuant to Section 3 of this administrative regulation.~~ The classification is based on the type and quantity of sludge or other special waste to be accepted at the landfarm or composting site or facility. The following classifications are established:

(1) A Type A landfarm or composting facility is a site or facility that accepts Type A ~~wastewater treatment~~ sludge or other special waste. Type A ~~wastewater treatment~~ sludge is sludge with the following parameters:

Cadmium	Greater than 10 mg/kg;
Copper	Greater than 450 mg/kg;
Lead	Greater than 250 mg/kg;
Nickel	Greater than 50 mg/kg;
Zinc	Greater than 900 mg/kg.

(2) A Type B landfarm or composting facility is a site or facility that accepts Type B ~~wastewater treatment~~ sludge or other special waste. Type B ~~wastewater~~ sludge is sludge with the following parameters:

Cadmium	Less than or equal to 10 mg/kg;
Copper	Less than or equal to 450 mg/kg;
Lead	Less than or equal to 250 mg/kg;
Nickel	Less than or equal to 50 mg/kg;
Zinc	Less than or equal to 900 mg/kg.

The maximum amount of ~~wastewater treatment~~ sludge that may be processed by a Type B landfarm or composting site or facility is 250,000 gallons or 250 tons (dewatered) per calendar year. If the owner or operator is processing Type B sludge and exceeds this volume limitation, then the site or facility shall be classified as a Type A landfarm or composting facility. ~~Unless otherwise required by the cabinet, an applicant for a Type B landfarming or composting permit shall be exempt from the requirements of publishing a public notice, the posting of financial assurance, the monitoring of groundwater, and postclosure care.~~

(3) One (1) time only disposal. An applicant for one (1) time only disposal of special waste by landfarming or composting methods shall submit an application for a Type B landfarming or composting facility ~~unless otherwise directed by the cabinet.~~

(4) An application to landfarm biosolids shall meet the requirements of 401 KAR 45:105. ~~Other special waste. An application to landfarm or compost special waste other than municipal wastewater treatment sludge shall be classified using the parameters set forth in subsections (1) and (2) of this section and additional parameters based upon the source, chemical and physical characteristics of the waste, the volume of waste, and the waste potential for adverse impact on human health or the environment. After review of the notice of intent filed pursuant to Section 3 of this administrative regulation, the cabinet shall classify the site or facility as either a Type A or Type B landfarming or composting facility. The applicant shall comply with all requirements in this chapter for the designated type of landfarming or composting facility.~~

(5) A facility composting a Type A ~~wastewater~~ sludge may, at

the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special waste received, methods of composting and siting considerations.

(6) A special waste landfarm or composting site or facilities classification under this section shall be reevaluated based upon the annual analyses submitted under Section 6(19) or 9(5) of this administrative regulation. The cabinet may reassign a landfarming or composting site or facility classification based on this submittal and require the owner or operator of the landfarm or composting site or facility to modify the permit accordingly.

(7)(a) Classification under this section shall be based on the average concentration of ~~these~~ metals, listed in subsection (1) and (2) of this section, in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. Metal concentration values shall be determined on a dry weight basis. Analysis shall be accomplished by determining the ~~heavy~~ metal concentration of the undried sample (wet weight) and converting to dry weight using percent solids. The following formula shall be used: mg/L or mg/kg (wet weight) divided by (percent solids/100) = mg/kg dry weight.

(b) A single metal parameter shall be sufficient to require a sludge to be classified as Type A.

Section 3. Application Procedure for a Special Waste Landfarming or Composting Permit.

(1) Notice of intent to apply. An applicant for a special waste landfarming or composting permit shall submit a notice of intent to apply as required under Section 8(1)(b) or (c) of 401 KAR 45:030. Upon review of the notice of intent to apply, the cabinet shall notify the applicant of the special waste classification determination and designate the landfarming or composting facility as either a Type A or Type B facility. An applicant may be exempt from submitting a notice of intent prior to submitting the permit application required in subsection (2) of this section if the applicant is classifying itself as a Type A facility. However, the applicant is required to submit a notice of intent form with the permit application specified in subsection (2) of this section.

(2) (a) Contents of landfarming or composting permit application. Upon determination of a special waste classification, A person shall submit the designated permit application for a special waste landfarming or a composting facility as specified in Section 8(1)(b) or (c) of 401 KAR 45:030 to the cabinet.

(b) A landfarming application may include parcels of land that are not located contiguously.

(3) (a) An applicant for a landfarming or composting facility permit shall comply with applicable requirements ~~for a formal permit as specified in 401 KAR 45:030 when applying for a formal permit.~~

(b) An applicant for a Type A landfarming or composting facility shall also comply with the:

1. Public notice requirement in 401 KAR 45:050; ~~the~~
2. Financial assurance requirements of 401 KAR 45:080; ~~the~~
3. Surface and groundwater requirements of 401 KAR 45:160; ~~the~~

and ~~the~~

4. Postclosure requirements of Section 4 of this administrative regulation.

(4)(a) A groundwater monitoring plan pursuant to 401 KAR 45:160 shall be required for Type A facilities.

(b) Upon examination by the cabinet of the facility specific geologic setting ~~geological aspects~~ and any variance requests ~~other relevant factors~~ in the permit application ~~by the cabinet~~, the cabinet may require the applicant for a Type B facility ~~may be required~~ to prepare a groundwater monitoring plan to include location and specifications of wells, monitoring parameters and monitoring schedules in accordance with 401 KAR 45:160. ~~This plan shall be required for Type A landfarms or composting facilities.~~

(5) ~~The cabinet shall not allow landfarming or composting practices that may present a threat to human health or the environment.~~ The cabinet shall base a decision to approve or deny a permit ~~as to the land~~ application for a special waste landfarming or composting facility based on the suitability of the facility, the ~~a particular~~ special waste's waste upon the ability ~~of the waste~~ to biodegrade in the environment, the potential for the special waste to be managed in a manner consistent with 401 KAR 30:031, the

likelihood that special waste constituents will contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the special waste to harm human health or the environment.

Section 4. Closure and Postclosure of Landfarming and Composting Facilities.

(1) An owner or operator permanently ceasing to accept special waste at a Type A or Type B special waste landfarming or composting site or facility shall submit to the cabinet a closure report that includes:

(a) The results of final soil samples taken in accordance with the

Required Buffer Zones Minimum Distance in Feet[Feet] From the Boundary of the Application Zone		
Structure or Object	Subsurface Injection or Incorporation	Surface Application
Residences & occupied Buildings	200	300
Water Well	200	300
Surface Water Body	200	300
Karst Feature	200	300
Perennial Stream	200	300
Intermittent Stream	30	50
Ephemeral Stream	30	50
Property Line	30	50
Public Road	30	50

construction/operation permit within eighteen (18) months following the last application of special waste;

(b)1. Landfarming sites or facilities shall submit a historical summary of all landfarming, by subplot, showing:

a. The allowable and actual rates of special waste application;[-]

b. Heavy metals and nitrogen; and[-]

c. Incorporating the annual landfarming review required by[as set forth in] Section 6(19) of this administrative regulation; or

2. Composting sites or facilities shall prepare a historical summary of composting activities at the site incorporating the annual composting review report required[as set forth] in Section 9(5) of this administrative regulation.

(c) A certification from the owner or operator that the site or facility is closed and is in compliance with 401 KAR 30:031; and

[d] ~~Any additional information required by the cabinet in the original landfarming or composting permit.~~

(2) The cabinet shall review the closure report and determine whether any additional monitoring or information shall be required to assure compliance of the site or facility with 401 KAR 30:031. If the site is not in conformance with 401 KAR 30:031 or the requirements of this chapter, the cabinet may take appropriate enforcement actions for violations of this chapter or KRS Chapter 224.

(3)(a) A two (2) year postclosure monitoring maintenance period commencing on the first day after the facility permanently ceases accepting special waste is required for all Type A landfarming and composting facilities and for any other landfarming or composting facility required to conduct groundwater or surface water monitoring pursuant to[under] 401 KAR 45:160.

(b) During the postclosure monitoring and maintenance period, the owner or operator shall conduct groundwater and surface monitoring as required by:

1. 401 KAR 45:160;[-]

2. The facility's approved groundwater and surface water monitoring plans;[-] and

3. The terms of the facility's special waste permit.

(4)(a) At the conclusion of the two (2) year postclosure monitoring and maintenance period, the owner or operator shall submit a certification that postclosure is complete and that the site or facility is in compliance with 401 KAR 30:031 and the terms of this chapter.

(b) The cabinet shall review the postclosure certification and if no additional monitoring or information is required and the site or facility is not subject to any enforcement actions for violations of this chapter or KRS Chapter 224, then the cabinet shall accept the owner's or operator's certification of postclosure.

(5) Upon acceptance of certification of postclosure, the cabinet shall release the financial assurance bond.

(6) The two (2) year postclosure monitoring and maintenance period may be extended if groundwater contamination as specified in Section 5 of 401 KAR 45:160 is documented and the owner or operator is required to submit a groundwater assessment plan.

(7) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfarm or composting site or facility postclosure is certified as complete and financial assurance is released.

Section 5. Siting Requirements for Landfarming. Special waste landfarming sites or facilities shall comply with the following siting requirements:

(1) Special waste shall not be applied in the 100-year floodplain unless the special waste is injected or incorporated;

(2) Land application units shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock;

(3) Special waste shall not be applied on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour; and

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

(5) All landfarming facilities shall comply with 401 KAR 30:031 and shall maintain the following buffer zones:

Section 6. Operating Requirements for Special Waste Landfarming Facilities. Special waste landfarming sites or facilities shall comply with the following:

(1) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens as specified in Section 11 of this administrative regulation.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the landfarming site during special waste application. All sludge applications shall be accomplished under the direction of a certified landfarming operator.

(3) When surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) No hazardous wastes or mixtures of hazardous and solid waste shall be disposed at, discharged to, or placed in a landfarming site.

(6) No toxic wastes or mixtures of toxic and nontoxic wastes regulated under 7 USC 136 et seq. (the Toxic Substances Control Act) shall be disposed at, discharged to, or placed in a landfarming site.

(7) The following agricultural use restrictions shall apply:

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption will be harvested within twelve (12) months;

(b) Land spreading shall not occur on land where crops for direct human consumption will be harvested within two (2) months;

(c) Dairy grazing shall be prohibited for six (6) months after land spreading. Other livestock grazing shall be prohibited for three (3) months;

(d) ~~The~~[If the] annual application rate of cadmium shall meet the requirements in 401 KAR 30:031 Section 6[exceeds 0.44 pound per acre, food chain crops shall not be utilized in the cropping season following land application]; and

(e) Special waste shall not be land spread where tobacco is to be harvested within five (5) years of special waste application, if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application, unless the special waste has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation.

(9) Special waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) No special waste shall be applied in excess of schedules and rates of special waste application established in subsection (23) of this section and Section 7 of this administrative regulation.~~[approved by the cabinet.]~~

(11) No raw or unstabilized special waste shall be landfarmed. The permittee shall maintain compliance with the ambient air quality standard for odor, as set forth in 401 KAR 53:010.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge which produces aerosols shall be prohibited.

(14) Subplots shall be staked or otherwise clearly marked in the field.

(15) The owner or operator shall have a sign located at the entrance to the landfarming facility. The sign shall indicate the source and type of special waste and the type of operation, the name of operator, the permit number, the contact person and the emergency telephone number.

(16) Surface water or special waste ponding within the application zone shall be prohibited.

(17) Surface run-off and run-on shall be controlled to minimize the possibility of applied special waste contaminating nearby surface water or adjacent land areas.

(18) Records of all landfarming activities shall be maintained throughout the operation of the site on the form entitled Annual Landfarming Review, DEP 7048~~[forms provided by the cabinet throughout the operation of the site]~~. The records shall at a minimum contain the schedules and rates of special waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) Each landfarming owner or operator shall submit an annual report of landfarming activities to the cabinet by March 15th for the landfarming activities conducted the previous calendar year~~[sixty (60) days prior to the anniversary date of the permit issuance]~~. The report shall be submitted on form DEP 7048 entitled "Annual Landfarming Review"~~[(November 2016)]~~.~~[The requirements contained in the annual landfarming review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

(20) Operational monitoring shall be performed on the following schedule:

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit application; and

(b) Special waste from~~[municipal wastewater treatment]~~ municipal water treatment facilities shall be sampled in accordance with the following table, or more frequently if required by the cabinet. Other special waste shall be sampled in accordance with a schedule approved by the cabinet. Special waste shall be analyzed for solids content, pH, ammonium nitrogen (NH₄-N), nitrate nitrogen (NO₃-N), total Kjeldahl nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Required Sampling Schedule		
Design Treatment Capacity(gallons per day)	Samples Per Year	
Less than 1,000,000	2	
1,000,001 - 10,000,000	4	
More than 10,000,000	12	

(21) Soil pH shall be maintained at six and five-tenths (6.5) or greater during crop production, hay production, or grazing.

(22) Special waste containing concentrations of PCBs greater than one (1) milligram per kilogram shall not be landfarmed.

(23) The maximum amount of metals from special waste that may be applied during the life of the site shall be based upon the cation exchange capacity (CEC) of the soil and shall be as follows:

Maximum Amount of Metals Cation Exchange Capacity

Parameter	(meq/100g)		
	0-5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.92 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

The following equation shall be used to determine the maximum number of tons of special waste per acre that may be land spread without exceeding the above limitations:

$$\text{Tons waste / acre} = \frac{(\text{lbs per acre for each parameter Table 4})}{(\text{dry mg / kg of metal in waste sample}) \times 0.002}$$

(24) The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone.^a

(25)(a) If the laboratory analyses and calculations to determine quantities of metals applied to the soil discloses that the cumulative concentration of a contaminant is above the maximum level permitted under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The owner or operator shall cease further landfarming and submit to the cabinet within forty-five (45) days a report describing proposed corrective actions to be taken by the owner or operator.

(b) A notice shall be recorded on the property deed within forty-five (45) days of receipt of the monitoring results stating that the property has received special waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, the owner or operator who is landfarming Type A sludge shall sample surface water quarterly.

(a) Parameters to be monitored shall include:

1. pH;~~[]~~
2. Ammonium nitrogen (NH₄-N);~~[]~~
3. Fecal coliform bacteria;~~[]~~
4. Chromium;~~[]~~
5. Biological oxygen demand;~~[]~~
6. Total organic carbon;~~[]~~and
7. Total dissolved solids.

(b) A minimum of one (1) upgradient and one (1) downgradient sampling point shall be required.

(27) Owners and operators of Type A landfarming or composting facilities and all Type B facilities that have documented contamination~~[other designated facilities]~~ shall conduct groundwater monitoring in accordance with 401 KAR 45:160.

(28) If ~~[heavy-]metal~~ applications exceed the amounts listed in subsection (23) of this section, the owner or operator shall immediately commence closure of the facility and ~~[immediately]~~ submit a closure report within 45 days containing the information required by Section 4(1) of this administrative regulation. The report shall also include a copy of the notice in the deed advising all future landowners in perpetuity that ~~[heavy-]metal~~ concentrations exceed those allowed by this administrative regulation.

(29) Landfarming sites and facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 7. Application Rates for Landfarming Sites or Facilities.

(1) The annual application rate shall be the lesser of the two application rates ~~[as-]~~determined for cadmium and for nitrogen utilization.

(2) The applicant shall determine the percent of available organic nitrogen in the special waste using the following calculation: Percent available organic N = (percent total N) - (percent NH₄-N) - (percent NO₃-N).

(3) The applicant shall determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH₄-N x 20) + (percent NH₃-N x 20) + (percent available organic N x 4).

(b) Surface application: Lbs available N/ton = (percent NH₄-N x

10) + (percent NO₃-N x 20) + (percent available organic N x 4).

$$\text{Tons/acre} = \frac{\text{Nitrogen utilization rate of the vegetative cover}}{\text{Lbs available organic N/ton}}$$

(4) The annual application rate of cadmium from special waste shall not exceed 0.44 pound per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons/acre} = \frac{\text{pounds of allowable cadmium per acre}}{(\text{mg per kg of cadmium in sample}) \times 0.002}$$

Section 8. Sludge Giveaway Program. A municipal water [or wastewater treatment] sludge generator may give away sludge equal to or less than the metal concentration limitation specified in Section 2(2) of this administrative regulation to persons for subsequent use as a soil conditioner. This program shall be operated under a registered permit-by-rule in accordance with this administrative regulation and 401 KAR 45:070. The maximum amount of sludge that may be distributed annually to any person is limited to 2000 pounds (dry weight).

(1) During operation of the giveaway program the generator shall:

(a) Maintain a list of names and addresses of all persons receiving the sludge;

(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule contained in Section 6(20) of this administrative regulation, and a copy of the distribution log;

(c) Provide to persons receiving special waste, copies of the sludge analyses and a brochure, approved by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and

(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this administrative regulation.

(2) Unless the sludge has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation, it shall not be used in a manner likely to allow direct human contact for a period of twelve (12) months from the date of application.

(3) The sludge generator shall maintain another approved means of sludge disposal.

Section 9. Operating Requirements for Composting Facilities. Composting facilities shall comply with the following:

(1) Within one (1) month of receiving any materials that do not meet standards for land application established in the permit or by this administrative regulation, the owner or operator shall dispose of the material in a facility permitted to accept the waste or special waste[waste management facility any materials that do not meet standards for distribution within one (1) month of such a determination];

(2) After the compost has completed the curing process, at least seventy-five (75) percent of the compost shall be distributed within one (1) year;

(3) Use one (1) or more processes to further reduce pathogens in accordance with Section 12 of this administrative regulation;

(4) Process and store compost on an impermeable pad, or provide information on soils at the facility and a groundwater quality assurance plan;

(5) Each composting owner or operator shall submit an annual report for the previous calendar year's activities to the cabinet by March 1st of each year[sixty (60) days prior to the anniversary date of the permit issuance]. The report shall be submitted on form DEP 7048A entitled "Annual Composting Review" [(November 2016): The requirements contained in the annual composting review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601 (502) 564-6716; between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste]; and

(6) Composting sites or facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 10. Usage of Composted and Treated Special Waste.

(1) Composted special waste and treated special waste that has undergone additional treatment to ~~[a level of a process to]~~ further reduce pathogens, as described in Section 12 of this administrative regulation, shall meet the following criteria in order to be distributed or marketed to the general public:

(a) The final product shall not exceed Type B metals concentration limits as specified in Section 2(1)(b) of this administrative regulation.

(b) A brochure shall accompany all compost or treated special waste sold or given away. The brochure shall be subject to cabinet approval and shall contain, at a minimum, the following information:

1. The source or sources of the original material;

2. An[A recent] analysis of the parameters in paragraph (b) of Section 6(20) within six (6) months of the finished product; and

3. Suggested uses and application rates for the product; and

(c) The quantity distributed shall be limited to fifty (50) tons per person per year for composted special waste and fifteen (15) tons per person per year for treated special waste.

(2) A final product that exceeds metals concentration limits or exceeds the quantity limitation set forth in subsection (1) of this section shall be disposed or distributed in accordance with the facility's permit ~~[or otherwise directed by the cabinet]~~.

Section 11. Processes to Significantly Reduce Pathogens. Processes to significantly reduce pathogens shall include one (1) or more of the following:

(1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen degrees Celsius (15° C) to forty (40) days at twenty degrees Celsius (20° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins. Sludge in paved or unpaved basins[in which the sludge] shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures which average on a daily basis above zero degrees Celsius (0° C).

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty degrees Celsius (20° C) to fifteen (15) days at thirty-five degrees Celsius (35° C) to fifty-five degrees Celsius (55° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(4) Composting. When using the within-vessel, static aerated pile or windrow composting methods, the special waste shall be maintained at minimum operating conditions of forty degrees Celsius (40° C) for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five degrees Celsius (55° C).

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours ~~[of contact time]~~.

~~[(6) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.]~~

Section 12. Processes to Further Reduce Pathogens. Processes to further reduce pathogens shall include one (1) or more of the following:

(1)(a) Composting.

1. Using the within-vessel composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

2. Using the static aerated pile composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

3. Using the windrow composting method, the special waste shall:

a. Attain a temperature of fifty-five degrees Celsius (55° C) or greater for at least fifteen (15) days during the composting period; and[. Also,]

b. During the high temperature period, there shall be a minimum of five (5) turnings of the windrow.

(b)1. Heat drying. Dewatered sludge cake shall be dried by

contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower.

2. Sludge particles shall reach temperatures in excess of eighty degrees Celsius (80° C), or the wet bulb temperature of the gas stream in contact with the sludge at the point when it leaves the dryer shall be in excess of eighty degrees Celsius (80° C).

(c) Heat treatment. Liquid sludge shall be heated to 180 degrees Celsius (180°C) for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at fifty-five to sixty degrees Celsius (55° - 60° C), with a volatile solids reduction of at least thirty-eight (38) percent.

~~[(e) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) to (d) of this subsection.]~~

~~(2) Any of the processes described in paragraphs (a) to (d) of this subsection shall be added to the processes in Section 11. [If added to the processes described in Section 11 of this administrative regulation, further reduce pathogens. Because] The processes listed in paragraphs (a) to (d) of this subsection, on their own, do not reduce the attraction of disease vectors but are meant to be added to the processes in Section 11. The following processes shall be an additional method of reducing pathogens: [they are only add-on in nature:]~~

(a) Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(b) Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes, such as Cobalt-60 and Cesium-137, at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(c) Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy degrees Celsius (70° C).

~~[(d) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the methods described in paragraphs (a) to (c) of this subsection.]~~

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Annual Landfarming Review", Form DEP 7048, (February 2023); and

(b) "Annual Composting Review", Forms DEP 7048A, (February 2023).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for composting and land application of sludges.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the regulated community to know the requirements for the composting and land applying sludges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. Sludges from water and wastewater treatment plants as well as some other sludges are special wastes pursuant to KRS 224.50-760. This administrative regulation establishes requirements for composting and land applying those materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the regulated community on the proper composting and land application procedures and requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the processes that are established in this administrative regulation do not apply to wastewater treatment plant sludges (biosolids). The amendments make other corrections to streamline the process and comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly direct interested individuals to 401 KAR 45:105 where the information related to the management of biosolids is located.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying that information related to biosolids as required by KRS 224.50-765 is located in 401 KAR 45:105. The remaining changes streamline the current process for sludges that do not originate from wastewater treatment plants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that the processes for the regulation of biosolids is located in 401 KAR 45:105. The amendment also streamlines the current processes related to other sludges that may be composted or land applied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 refer to 401 KAR 45:105 to find information managing biosolids.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The same application fee will apply to the current process and the costs of complying with 401 KAR 45:105 will be either the same or less than the current process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having all of the information related to biosolid management in the new administrative regulation (401 KAR 45:105).

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

(a) Initially: There will not be a cost to the agency to implement this amendment.

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will be reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-100, 224.40-305, 224.50-760, 224.50-765.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The current application fees (401 KAR 45:250) will continue after these amendments are effective.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue. The current application fees will continue after these amendments

are effective and will be applied to the biosolids application.

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and the new biosolids permitting process.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

Other Explanation: The new process related to the implementation of SB 213 from the 2023 Legislative Session changed the process but didn't change any of the fees associated with the management of biosolids.

(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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying that this permitting administrative regulation does not apply to the permitting of the land application of biosolids will not result in a cost increase for the regulated entity.

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is simply the insertion of language clarifying that this regulation does not apply to the land application of biosolids. Those processes are established in 401 KAR 45:105. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:140. Conditions applicable to all special waste permits.

RELATES TO: KRS 224.1~~[224.04]~~, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

(1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance constitutes a violation of the appropriate requirement in KRS Chapter 224~~[Kentucky Revised Statute]~~ and is grounds for enforcement action that may result in revocation, modification, or denial of a permit application.

(2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, then~~[if applicable,]~~ the owner or operator shall apply for and obtain a new permit.

(3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with this chapter before commencing operations.

(4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent additional releases or other noncompliances with 401 KAR Chapter 45 and KRS 224.50-760~~[significant adverse impacts on human health and the environment]~~.

(5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance includes:

(a) Effective performance~~;~~;

(b) Adequate funding~~;~~;

(c) Adequate operator staffing and training~~;~~ and

(d) Process controls, including appropriate quality assurance procedures.

(6) Permit actions. The permit may be modified or revoked due to non-compliances with the provisions of this chapter and KRS Chapter 50~~[for cause,]~~ The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall furnish the cabinet with ~~[any]~~ information that the cabinet reasonably requests to determine whether cause exists for modifying, revoking, or terminating the permit, or to determine compliance with the permit or ~~[any provision of KRS Chapter 224 or]~~ this chapter. The owner or operator shall ~~[also]~~ furnish to the cabinet upon request copies of records required to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the

cabinet or its authorized representative to:

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or this chapter, any substances or parameters within the boundaries of the permitted area and outside the boundaries of the permitted area if necessary to determine the environmental impacts resulting from a permitted activity~~[at any location]~~.

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with Section 10 of 401 KAR 45:030.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a construction and operation~~[construction/operation]~~ permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee specified in Section 2(1)(d) of 401 KAR 45:250; and

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste construction and operation~~[construction/operation]~~ permit or modified construction/operation permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with Section 3 of 401 KAR 45:040.

(13) Monitoring reports. Monitoring results shall be reported at the intervals specified in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. Periodic reports as required in this chapter or in the permit shall be submitted to the cabinet on the dates required in this chapter or in the permit~~[on a timely basis]~~.

(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, the owner or operator~~[he]~~ shall promptly submit the facts or correct information.

Section 2. (1) Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this administrative regulation, the cabinet shall establish conditions on a case-by-case basis in permits to ensure compliance with the requirements of this chapter.

(2) The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to assist in compliance with the approved application and this chapter~~[protect human health and the environment]~~.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address

<https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the conditions applicable to all special waste permits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as it sets standards and duties of the applicant/permittee for all special waste permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. 401 KAR Chapter 45 establishes different permitting options for entities that manage special waste. This administrative regulation provides applicants and permittees information that applies to all special waste permit types.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the regulated community information that is applicable to all special waste permit types.

(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 clarifies that the processes that are established in this administrative regulation do not apply to wastewater treatment plant sludges (biosolids). The amendments make corrections to clarify the meaning of parts of the administrative regulation and comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct KRS Chapter 13A deficiencies as well as clarifying the language related to all special waste permit types.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying language that is related to all special waste permit types and make changes that conform to the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing clear and concise language that is compliant with the drafting requirements

of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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 comply with the administrative regulation. There are no additional requirements. However, the requirements that are there are easier to understand, and citations are more concise.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the regulated entity to comply with this amendment. The requirements in the administrative regulation have not changed. The only changes were in an effort to clarify the requirements for regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having clear and concise requirements to follow related to all special waste permit types.

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

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process in 401 KAR 45:105.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation or the amendment. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? No. All entities that submit an application for special waste permit will have their permits reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The administrative regulation provides general information related to all special waste permits. Those requirements have not been changed but simply clarified.

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

(c) How much will it cost to administer this program for the first year? There should not be an additional cost associated with implementation of these amendments. The Cabinet will use the same personnel and equipment to review permits under the current structure and these amendments.

(d) How much will it cost to administer this program for subsequent years? There should not be an additional cost associated with implementation of these amendments.

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

Revenues (+/-): There are no anticipated increases in revenues related to these amendments.

Expenditures (+/-): There are no anticipated increases in expenditures related to these amendments.

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 Cabinet does not anticipate there to be a significant cost savings to the regulated entity with the implementation of these amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The Cabinet does not anticipate there to be a significant cost savings to the regulated entity in subsequent years related to the implementation of these amendments.

(c) How much will it cost the regulated entities for the first year? The addition of language clarifying language in the administrative regulation and making amendments to comply with drafting requirements of KRS Chapter 13A will not result in additional costs.

(d) How much will it cost the regulated entities for subsequent years? The addition of clarifying language stated in (c) will not result in a cost increase for the regulated entity.

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 not a predicted change in costs with this proposal.

Expenditures (+/-): There is not expected to be a change in expenditures with this proposal.

Other Explanation: The amendment to this administrative regulation is clarify the administrative regulation and make it easier to interpret. Therefore, there is not an anticipated impact to costs or revenues with this amendment.

(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 proposal will not have a major economic impact as defined KRS 13A.010(13).

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. 302.4, Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 40 C.F.R. 302.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities. This administrative regulation does not establish requirements for surface or groundwater monitoring of special waste sites or facilities where biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility have been land applied.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required pursuant to 401 KAR 45:100 Section 3(3), and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination.

(2) Designs, reports, and plans constituting the public practice of geology, as defined in KRS 322A.010, shall be developed by a person registered pursuant to KRS Chapter 322A, except as provided for by KRS 322A.080.

(3) Landfarming and composting sites or facilities required to monitor surface water shall comply with Section 6(26) of 401 KAR 45:100. Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this administrative regulation. The owner or operator shall satisfy the requirements of this administrative regulation for all wastes and waste constituents contained in the site or facility. The cabinet may waive baseline groundwater characterization and groundwater monitoring, subject to the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall consist at a minimum, of the following:

(1) Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area. Background wells shall be placed as described in paragraphs (a) and (b) of this subsection.

(a) At least one (1) background well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the special waste site or facility.

(b) When the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems. Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area; and

(2) At least two (2) monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed. The cabinet

may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility. Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

(3) An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with Section 3(2) of 401 KAR 45:110.

Section 3. Requirements for Monitoring Well Construction.

(1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole. Only potable water shall be used in drilling monitoring wells, unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;

(b) Be installed into firm rock, unless otherwise approved by the cabinet;

(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locking cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 4. Sampling and Analysis.

(1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 8 of this administrative regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 8 of this administrative regulation.

(3) If analysis of the sample results indicates contamination, the

owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 5. Groundwater Contamination Assessment and Corrective Action. (1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 CFR 302.4 Appendix A[as of September 1991], above the maximum contaminant level (MCL) as specified in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as specified in Section 6 of this administrative regulation.

(2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a special waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the special waste site or facility is the probable source of contamination.

(4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section. The assessment plan shall specify the manner in which the owner or operator will determine the existence, quality, quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a registered geologist pursuant to subsection (2) of Section 1~~[qualified professional in the field of hydrogeology]~~ and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum, the following information:

(a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;

(b) Sampling and analytical methods for the parameters to be evaluated;

(c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and

(d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate, and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies that may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.

(6) If the cabinet determines that the assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan.

(9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from

the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

- (a) The specific methods or techniques to be used to abate groundwater contamination from the facility;
- (b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and
- (c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.

(10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this administrative regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.

(12) Corrective action measures under this administrative regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining whether background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

(a) The owner or operator shall take at least four (4) portions from a sample at each well and determine whether the difference between the mean of the parameter at each well, using all portions taken, and the background value for the parameter is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedures, with at least the same number of portions as used in the first test, with fresh samples from the monitoring wells. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The cabinet shall approve such a procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure described in paragraph (a) of this subsection.

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit which provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following ~~[dissolved]~~metals and other waste analysis based parameters:

- (a) 1. Specific conductance;
- 2. Chemical oxygen demand;
- 3. Total organic carbon;

- 4. Chloride;
- 5. Iron;
- 6. Manganese;
- 7. Sodium;
- 8. Total nitrogen;
- 9. Nitrate nitrogen;
- 10. Chromium;
- 11. Cadmium;
- 12. Coliform bacteria;
- 13. pH;
- 14. Calcium;
- 15. Magnesium;
- 16. Potassium;
- 17. Sulfate Bicarbonate; and
- 18. Carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

- (a) 1. Chloride;
- 2. Chemical oxygen demand;
- 3. Total dissolved solids;
- 4. Total organic carbon;
- 5. Specific conductance;
- 6. pH;
- 7. Copper;
- 8. Nickel;
- 9. Zinc;
- 10. Iron;
- 11. Sodium;
- 12. Arsenic;
- 13. Cadmium;
- 14. Lead;
- 15. Mercury;
- 16. Selenium;
- 17. Calcium;
- 18. Magnesium;
- 19. Potassium;
- 20. Sulfate;
- 21. Bicarbonate; and
- 22. Carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For special waste sites or facilities other than those specified in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters.

(1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

- (a) 1. Chemical oxygen demand;
- 2. Total organic carbon;
- 3. Total nitrogen;
- 4. Nitrate nitrogen;
- 5. Lead;
- 6. Chromium;
- 7. Cadmium; and
- 8. Coliform bacteria.

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and

(c) Monitoring of additional parameters may be required by the cabinet based on the waste analysis.

(2) Owners or operators of special waste landfills used solely for the disposal of coal combustion by-products shall monitor semiannually for the following:

- (a) 1. Chloride;
- 2. Chemical oxygen demand;

3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH; and
7. Copper.

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum.

(c) Monitoring of additional parameters may be required by the cabinet based on a significant increase from the baseline characterization.

(d) If, after four (4) initial monitoring events, analysis for the parameters in paragraphs (a) to (c) of this subsection indicates no exceedances above levels specified in Section 5(1) of this administrative regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than those referenced in subsections (1) and (2) of this section shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

Section 9. Surface Water Monitoring and Corrective Action.

(1) Special waste sites or facilities required to monitor surface water shall do so in accordance with a plan provided in the permit application. The plan shall be sufficient to characterize the quality of surface water unaffected by the site or facility and to determine if water leaving the site or facility has been contaminated.

(a) Baseline sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize baseline conditions.

(b) Operational surface water monitoring shall be completed in accordance with the surface water monitoring plan approved in the permit application and shall be sufficient to determine if the site or facility is contaminating surface water.

(2) Corrective action shall be completed by a special waste site or facility owner or operator as necessary to comply with 401 KAR 30:031.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II., 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates groundwater monitoring plans for special waste facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the regulated community pertinent information related to groundwater monitoring plans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. 401 KAR Chapter 45 establishes different permitting options for entities that manage special waste. Some of those permits will require a groundwater monitoring plan. This administrative regulation provides regulated entities information related to those plans.

(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 statute by providing details related to groundwater monitoring plans.

(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 clarifies that groundwater monitoring plans do not apply to the land application of biosolids.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to let the regulated entity know that groundwater monitoring plans are not required for the land application of biosolids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by providing the regulated community a more concise administrative regulation related to groundwater monitoring plan as well as clarifying that groundwater monitoring plans do not apply to the land application of biosolids.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help in the effective administration of the statutes by ensuring that the requirements for the biosolids program and all other land applications are not confused and the appropriate standards are used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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: Each entity mentioned in question (3) will need to follow this administrative regulation for requirements related to groundwater monitoring plans for special waste management except for biosolids.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entities in complying with this administrative regulation. This administrative regulation didn't substantially change for special waste management of for special wastes that are not biosolids.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit by understanding that this administrative regulation doesn't apply to biosolids and from portions of the administrative regulation that were amended to clarify the intent that has caused confusion in the past.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There will not be a cost to the agency to implement this amendment

(b) On a continuing basis: There will not be a cost to the agency to implement this amendment on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this amendment. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760, 40 C.F.R. 302.4, 40 C.F.R. Part 503

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years? Currently the agency does not believe there will be an increase in costs to run the program in the future.

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

Revenues (+/-): The amendments to this administrative regulation will not generate any revenues. The amendments are only necessary to clarify the groundwater monitoring plan provisions do not apply to biosolid land application. The amendments also make clarifications that will make the administrative regulation easier to understand.

Expenditures (+/-): The cabinet will use existing staff and the same funding source to meet the requirements in this administrative regulation.

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? Regulated entities will not realize any cost savings from the amendments to this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities will not realize any cost savings from the amendments to this administrative regulation.

(c) How much will it cost the regulated entities for the first year? There will not be a cost increase to regulated entities related to this proposal.

(d) How much will it cost the regulated entities for subsequent years? There will not be a cost increase to regulated entities related to this proposal.

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

Cost Savings (+/-): There will not be a cost savings to the regulated community related to these amendments. The amendments state that groundwater monitoring plans are not required for the land application of biosolids. The other amendments are aimed at clarifying existing language that has caused confusion to the regulated community due to an outdated reference.

Expenditures (+/-): The expenditures will be relatively the same to regulated entities.

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 proposal will not have a major economic impact as defined KRS 13A.010(13).

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 45:250. Special waste permit fees.

RELATES TO: KRS 224.40

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes standards for special waste sites or facilities. This administrative regulation establishes a fee schedule for the issuance and modification of special waste site or facility permits.

Section 1. Applicability.

(1) The provisions of this administrative regulation shall apply to the owner or operator of each special waste site or facility required to apply for a permit, permit renewal, permit modification, or permit transfer, except publicly-owned facilities.

(2) The provisions of this administrative regulation shall also apply to special waste site or facility permit applications for the land application of biosolids~~submitted on or after June 24, 1992~~.

Section 2. Filing Fees.

(1) Each permit application shall be accompanied by an appropriate filing fee determined as follows:

Application	Fee
(a) Notice of intent	\$500
(b) Request for alternate specification to design criteria	\$500

or variance from regulatory requirements	
(c) Formal application and modifications to expand the facility horizontally	\$5,000
(d) Construction/operation permit	\$500
(e) Renewal	\$500
(f) Permit modifications other than horizontal expansions:	
1. Vertical expansions	\$1,000
2. Modification to closure plan	\$500
3. Receipt of waste from new source	\$50
4. Change of ownership or transfer of an existing permitted facility	\$500
5. Cabinet mandated increase in financial assurance	\$0
6. Closure of a facility that is not under a current special waste facility permit	\$1,000
7. Modifications not otherwise specified	\$500
(g) Emergency permit	\$500
(h) Research, development and demonstration permit	\$2,500

(2) A filing fee shall be in the form of a check or money order and made payable to the Kentucky State Treasurer. Filing fees shall not be refundable.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II., 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for the permitting processes regulated in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish all of the fees for this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes all of the fees for this chapter as it relates to

special waste permitting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish permitting fees for 401 KAR Chapter 45. These fees are used in conjunction with general funds to fund the program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that the fees established in the administrative regulation do apply to the new biosolids process.

(b) The necessity of the amendment to this administrative regulation: the amendment was necessary so the department can capture the fees that were already being charged for permit application review under the new biosolids process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying the fees for permitting processes apply to the biosolids process in 401 KAR 45:105.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the administration of the statutes by letting the regulated entities know that the fees in this administrative regulation apply to the permitting processes in 401 KAR 45:105.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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: Each entity mentioned in question (3) will need to remit the fee related to the appropriate permitting action when submitting a biosolids permitting application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entities in complying with this administrative regulation. The fees established in this administrative regulation were already being assessed to entities getting a permit to land apply sewage sludge. Now those former permitting actions will be permitted under this new biosolids process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have a streamlined process for the land application of biosolids that is in conformance with the corresponding federal regulation. It will also be clear that the fees established in this administrative regulation do apply to the permitting process established in 401 KAR 45:105.

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

(a) Initially: There will not be a cost to the agency to implement this new administrative regulation.

(b) On a continuing basis: There will not be a cost to the agency to implement this new administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this new administrative regulation. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for this chapter. The current fees that are charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process. There are no increases in the fees.

(9) TIERING: Is tiering applied? No. All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760, 40 C.F.R. Part 503

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The fee in this administrative regulation will apply to the applications in this chapter.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years? Currently the agency does not believe there will be an increase in costs to run the program in the future.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to

explain the fiscal impact of the administrative regulation.

Revenues (+/-): This administrative regulation will not generate any new revenues due to the biosolids being mainly regulated by 40 C.F.R. Part 503. The cabinet will charge the same for this new permitting process as it did for the existing permitting process for the regulation of these materials.

Expenditures (+/-): The cabinet will use existing staff and the same funding source to process and regulate biosolids under this new material.

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? Regulated entities will save \$500 per application. The current process is to charge \$500 for a notice of intent and then an additional \$5,000 for a formal application. This new process does not have a notice of intent and therefore the applicant will not be required to pay the \$500.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The savings in subsequent years will depend on the number of applications received by the agency. The applicant will still save \$500 per application due to the notice of intent not being required.

(c) How much will it cost the regulated entities for the first year? There will not be a cost increase to regulated entities related to this proposal. This material is currently permitted and regulated by the cabinet and a fee of \$5,500 (for new formal permits) will be reduced to \$5,000 with this new proposal.

(d) How much will it cost the regulated entities for subsequent years? The cost in subsequent years will depend on the number of applications submitted by regulated entities.

Note: If specific dollar estimates cannot be determined, provide a brief narrative

to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): The cost savings will be \$500 per application. However, a definite cost savings cannot be provided as it will depend on the number of applications received.

Expenditures (+/-): The expenditures will be relatively the same except for the cost savings mentioned above.

Other Explanation:

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

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

806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.

RELATES TO: KRS 304.1-050(1) 304.9-020, 304.9-055, 304.17A-005(29), 304.17A-732

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-732

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner 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 304.17A-732 requires insurers to annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to its insureds in conjunction with behavioral therapy and not in conjunction with behavioral therapy. This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-732.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by ~~in~~ KRS 304.1-050(2).

(3) "Insurer" is defined by KRS 304.17A-005(29).

(4) "Medication for addiction treatment" means a prescription drug that:

(a)

1. Is prescribed for use in the treatment of alcohol or opioid addiction; and

2. Contains methadone, buprenorphine, or naltrexone; or

(b) Was approved before January 1, 2022, by the United States Food and Drug Administration for the mitigation of opioid withdrawal symptoms.

~~[(5) "Pharmacy Benefit Manager" is defined by KRS 304.9-020(15).]~~

Section 2. Data Reporting Requirements.

(1)~~[(a)]~~ An insurer authorized to write health insurance in this state shall submit the data required by the Annual Report on Providers Prescribing Medication for Addiction Treatment Form~~[Pharmacy Claims Standardized Data Request]~~ to the commissioner by March 31st of each year.~~[A pharmacy benefit manger paying pharmacy claims on behalf of an insurer may submit~~

~~the data required by the Pharmacy Claims Standardized Data request to the commissioner on behalf of the insurer.]~~

~~[(2)(b)] The data required by the Annual Report on Providers Prescribing Medication for Addiction Treatment Form[Pharmacy Claims Standardized Data Request] shall be submitted via electronic mail to DOI.Healthreporting@ky.gov:~~

~~[1. Be submitted in an electronic format prescribed by the Commissioner;~~

~~2. Contain the prescribed data elements and information in the order prescribed; and~~

~~3. Contain data for claims received in the prior calendar year for prescriptions for medication for addiction treatment.~~

~~(2)(a) The Department shall generate and provide a Medical Claims Standardized Data Request to each insurer based on the data submitted pursuant to subsection (1) of this section.~~

~~(b) An insurer shall submit the data required by the Medical Claims Standardized Data Request within sixty (60) days of the date it is provided to the insurer, as described in paragraph (a) of this section.~~

~~(c) The data required by the Medical Claims Standardized Data Request shall:~~

~~1. Be submitted in an electronic format;~~

~~2. Contain the prescribed data elements and information in the order prescribed; and~~

~~3. Contain data for claims of identified insureds, as requested by the commissioner, that were received in the prior calendar year.]~~

Section 3. Material Incorporated by Reference.

~~(1) [The following material is incorporated by reference: Annual Report on Providers Prescribing Medication for Addiction Treatment Form, 7/2023, is incorporated by reference.~~

~~[(a) "Pharmacy Claims Standardized Data Request", 10/2021; and~~

~~(b) "Medical Claims Standardized Data Request", 10/2021.]~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.~~

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: September 12, 2023

FILED WITH LRC: September 13, 2023 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 28, 2023 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-732.

(b) The necessity of this administrative regulation: The necessity

of this administrative regulation is to adhere to the reporting requirements set forth in KRS 304.17A-732 which requires insurers to annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to its insureds in conjunction with behavioral therapy and not in conjunction with behavioral therapy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner may promulgate administrative regulations relative to the Kentucky Insurance Code, as well as KRS 304.17A-732.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of KRS 304.17A-732, which was Senate Bill 51 of this 2021 Regular Session.

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

(a) How the amendment will change this existing administrative regulation: The amendments change the reporting form process.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to make the process more efficient and accessible for reporting insurers and the department.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the statutes by requesting the exact data for the department to submit its annual report.

(d) How the amendment will assist in the effective administration of the statutes: These amendments streamline the reporting process and ensure the department can meet the statutory reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers offering/transacting in health insurance in the state of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Health Insurers will need to provide the Commissioner with a listing of provider types that are prescribing medicated assistant treatment in conjunction with behavioral therapy and not.

(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 associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurers and PBMs will be in compliance with statutory reporting requirements.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees that will be established.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation requires all insurers licensed to transact health insurance to report the same information to the department.

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 as the implementer of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the 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. 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? No revenue is expected to be generated.

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

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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:

(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?

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

(c) How much will it cost the regulated entities for the first year?

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative

to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

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)]

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(Amendment)

902 KAR 4:120. Health Access Nurturing Development Services (HANDS) Program.

RELATES TO: KRS 13B.080-13B.160, [200.700, 211.090, 211.180, 211.689]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.690

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the

cabinet. KRS 211.690 authorizes the Cabinet for Health and Family Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period until the child's third birthday. This administrative regulation establishes the eligibility criteria, services, provider qualifications, and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

Section 1. Definitions. (1) "Department" means the Department for Public Health or its designated representative.

(2) "Family support worker" [or "FSW"] means an employee or subcontractor of the local implementing agency[a provider's employee or subcontractor] who visits participants and performs services.

(3) "Local implementing agency" means a local health department or an agency that agrees to participate as a HANDS provider and to employ or contract with staff that:

(a) Meet the qualifications and training requirements for home visitation service delivery; and

(b) Agree to abide by all:

1. HANDS policies and procedures; and

2. Reporting requirements["HANDS" means ~~Health Access Nurturing Development Services, a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday as funding is available~~].

(4) "Participant" means the parent and child[an individual] enrolled in the HANDS program and receiving HANDS services.

(5) "Tele-service" means a home visitation service provided through video communication with the HANDS provider, parent, and child present in real time["Provider" means ~~a local health department agency subscribing to staff and training requirements, program policies and procedures, and reporting requirements of the HANDS Program and agreeing to participate as a HANDS provider~~].

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 4 of this administrative regulation, an individual shall be:

(a) [Submit ACH-301, Consent for Services, to the local health department or their subcontractor, in accordance with KRS 211.690(4);

(b) Be:

4.-] A pregnant individual who is under twenty (20) years old[woman who has not reached her 20th birthday];

(b)[2.-] A pregnant individual[woman] who is at least twenty (20) years old and upon assessment is identified as having risk factors[a risk is deemed likely] for the pregnancy or the infant;

(c)[3.-] The child of an individual identified in paragraph (a) or (b) of this subsection who is less than three (3) years of age and assessed[Up to the third birthday, an infant or toddler of an individual identified in subparagraph 1. or 2. of this subsection, whose family is determined to be at risk and is screened] for eligibility within ninety (90) days post-birth; or

(d)[4.-] A father or guardian of a child identified in paragraph (c)[subparagraph 3.] of this subsection.

(2) The local implementing agency shall assess an applicant for eligibility. The assessment shall reflect:

(a) The child and parents unique strengths and needs; and

(b) The services appropriate to meet those needs.

(3) All assessments of the child and family shall be:

(a) Conducted in a nondiscriminatory manner;

(b) Selected and administered so as not to be racially or culturally discriminatory; and

(c) Conducted in the native or preferred language of the child or parent.

(4) Parental consent shall be provided to the local implementing agency before an assessment.

(5) The assessment shall:

(a) Be conducted by a family support worker professional who meets the qualifications listed in Section 3(2) of this administrative regulation; and

(b) Result in:

1. Eligibility for HANDS services, in which the family shall be

referred for the development of a home visiting plan; or

2. Ineligibility for HANDS services, in which the family shall be provided with community resources, referral information and general parenting information.

(6) Participation in the HANDS Program is[shall be] voluntary.

(7)(3) Participation in the HANDS Program shall be discontinued if[prevented or terminated if one (1) of the following occurs]:

- (a) The child dies[Death of the fetus or infant];
- (b) The family elects to withdraw from the program;
- (c) The family moves out of state;
- (d) Contact with the family is lost; or
- (e) The family repeatedly fails to participate in program activities; or

(f) The goals established for the family are met.

(4) A screening shall include the following components:

(a) Using the ACH-300, Referral Record Screen, a provider shall determine eligibility of an applicant by:

- 1. Face-to-face interview; or
- 2. Evaluation of health records;

(b) If an individual's screening indicates eligibility for HANDS services, the individual shall be referred for an assessment; and

(c) If an individual's screening indicates ineligibility for HANDS services, the individual shall be provided with community resource and referral information.

(5) An assessment shall:

(a) Consist of the following components:

1. Using the ACH-302, Parent Survey Summary, and ACH-303, Parent Survey Score Sheet, a comprehensive needs assessment shall be performed by conducting a face-to-face interview with the child, mother, and family to include information regarding each parent's:

- a. Childhood experience;
- b. Lifestyle behaviors and mental health;
- c. Experience and expectations for parenting;
- d. Coping skills;
- e. Support system;
- f. Stress and anger management skills;
- g. Expectations of the infant's developmental milestones and behaviors;

- h. Plans for the child's discipline;
- i. Perception of the new infant; and
- j. Bonding and attachment to the infant; and

2. Arrangement for delivery of needed services;

(b) Be conducted by:

- 1. A social worker;
- 2. A registered nurse;
- 3. A graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or
- 4. A graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training; and

(c) Result in:

1. Eligibility for HANDS services, in which the individual shall be referred for the development of a home visiting plan; or

2. Ineligibility for HANDS services, in which the individual shall be provided with community resource and referral information and general parenting information.]

Section 3. Provider Qualifications. (1) A family support worker paraprofessional shall be a:

(a) High school graduate or holder of a general education development credential[GED] who:

- 1. is at least eighteen (18) years of age;
- (b)(2.) Has received department training in:
 - 1.[a.] Ongoing assessment of family strengths and needs;
 - 2.[b.] Service plan development;
 - 3.[c.] Evidence-based home visiting model;
 - 4.[d.] Coordination of services; and
 - 5.[e.] Evaluation; and

(c)(3.) Is supervised by a registered[public health] nurse or licensed social worker;];

(2) A family support worker professional shall be a:

(a) Licensed;

(b) Public health nurse who holds[has] a valid Kentucky Board of Nursing license as a registered nurse or advanced practice registered nurse;

(b)(c)4.) Licensed social worker who holds a valid Kentucky[meets the requirements for licensure by the State] Board of [Examiners of.] Social Work license;

(c)(2.) Graduate with a master's degree in human services or closely related field who shall be supervised by a registered nurse or licensed social worker; or

(d) [social work from an accredited institution; or

3.] Graduate with a bachelor's degree in early childhood education, human services, or closely related field who shall be supervised by a registered nurse or licensed social worker.[social work from an accredited institution;]

(3) A HANDS supervisor shall be a:

(a) Licensed nurse who holds a valid Kentucky Board of Nursing license as a registered nurse or advanced practice registered nurse; or

(b) Licensed social worker who holds a valid Kentucky Board of Social Work license.

(4)(d) Graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or

(e) Graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training.

(2) A local implementing agency[health department] shall meet the requirements to provide HANDS services if:

(a) The[its] staff or subcontractor receives the required training provided by the department to become a family support worker;

(b) It assures that appropriate staff meet the licensure requirements of the department pursuant to subsection (1) or (2)(b) or (c) of this section;

(c) It assures supervision by licensed personnel pursuant to subsection (3)(a) or (b)[subsection (1)(b) or (c)] of this section;

(d) It reports program data into the online HANDS database no later than the first Sunday of the month following the date of service; and

(e) It abides by the policies of the HANDS program.

Section 4. Services. (1) Home visitation may take place in the client's home or another community site if justified in the record. A home visit[visitation] shall include[the following]:

(a) Monitoring the child[of the child's, mother's,] and family's progress by:

- 1. Making referrals to community resources;
- 2. Tracking appointments to ensure they are being kept;
- 3. Following up on referrals[Performing follow-up services as identified by the provider]; and
- 4. Performing periodic evaluations of [the] participant's changing needs;

(b) The preparation and maintenance of case records that document[which shall be documented with] contacts, services needed, reports, and progress;

(c) Consultations with the family[parent or primary caregiver] on positive pregnancy outcomes, optimal child growth and development, safe and healthy[health and safe] homes, and family decision making and self-sufficiency; and

(d) Crisis assistance.

(2)(a) Service frequency shall be provided in accordance with the level of need of the parent or family[pursuant to ACH-306, Parent Completion LEVELS].

(b) The frequency of visitation shall be lessened as the family meets goals agreed to by the provider and the participant.

[(3) Between the second and third birthday, home visitation services shall be limited to a child whose family does not progress beyond level I of ACH-306, Parent Completion LEVELS.]

Section 5. Appeal Rights. (1) A local implementing agency[provider] shall notify an individual who does not meet criteria for admission or continuation in the program or who has had a service discontinued, in writing, within ten (10) days of the denial or discontinuance.

(2) An individual wishing to appeal an adverse action by the local implementing agency shall notify the department in writing within thirty (30) days of the date of the notice identified in subsection (1) of this section that a hearing is requested.

(3) Notice of an administrative hearing shall be provided in accordance with KRS 13B.050.

(4) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

Section 6. Tele-service Delivery Methods. (1)(a) HANDS home visitation services that are otherwise designated as face-to-face in accordance with this administrative regulation may be provided through tele-service delivery methods with informed parental consent.

(b) These services shall include those listed in Sections 2(5) and 4 of this administrative regulation.

(c) Verbal and written consent shall be provided for each child in a shared household. For example, if the family has twins, verbal and written consent shall be provided for each child.

(2) Tele-service delivery methods shall be reimbursed at the usual and customary rate.~~Incorporation by Reference. (1) The following material is incorporated by reference:~~

(a) "ACH-300, Referral Record Screen", 5/2016;

(b) "ACH-301, Consent for Services", 5/2016;

(c) "ACH-302, Parent Survey Summary", 5/2016;

(d) "ACH-303, Parent Survey Score Sheet", 5/2016; and

(e) "ACH-306, Parent Completion LEVELS", 5/2016.

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 17, 2023

FILED WITH LRC: September 13, 2023 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility criteria, services, provider qualifications, and appeal rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

(b) The necessity of this administrative regulation: The HANDS Program supports pregnant people and parents with young children who live in communities that face greater risks and barriers to achieving positive maternal and child health outcomes. Families choose to participate in home visiting programs, and partner with health, social service, and child development professionals to set and achieve goals that improve their health and well-being.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.690 establishes within the Cabinet for Health and Family Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures pregnant people or parents of young children who are at risk are appropriately identified and receive the supports and services necessary to achieve positive pregnancy and early childhood outcomes.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates defined terms for clarification, updates the provider qualifications, removes the material incorporated by reference to conform to programmatic changes, and adds the options for tele-service delivery methods when an emergency limits the ability to provide traditional face-to-face services.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update the defined terms, ensure a local implementing agency employs or contract with qualified staff, and to allow for the provision of tele-service delivery methods when traditional service delivery methods are not possible.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.690 establishes the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday.

(d) How the amendment will assist in the effective administration of the statutes: KRS 211.690 establishes within the Cabinet for Health and Family Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In fiscal year 2021 the HANDS program served 1,845 participants in 988 households. Local implementing agencies include fifty-six (56) local health departments and six (6) contracted provider agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local implementing agencies will need to ensure home visiting staff meet qualifications, will need to ensure home visiting staff and participants have the supports necessary to provide non-traditional services, and will need to ensure program participants are aware of the appeals process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to participants. There will be no change in the costs to the local implementing agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The goals of the HANDS program are positive pregnancy outcomes, optimal child growth and development, children live in healthy, safe homes, and families make decisions that enhance long-term independence over meeting short term or immediate needs. By participating in the HANDS program families of young children will receive supports and services that will help them help their child develop and grow.

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

(a) Initially: This is an existing program, there will be no initial costs to implement this administrative regulation.

(b) On a continuing basis: There will be no changes to the costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this administrative regulation is a mix of tobacco settlement dollars, federal grant funding from Health Resources and Services Administration, and Medicaid reimbursement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are equally applied to the regulated entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Maternal and Child Health and local health departments that participate in the HANDS program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.690.

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

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

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

(c) How much will it cost to administer this program for the first year? The HANDS program receives \$7,000,000 in tobacco settlement funding and \$7,000,000 from Health Resources and Services Administration. There will be no changes in the costs to the program.

(d) How much will it cost to administer this program for subsequent years? The HANDS program receives \$7,000,000 in tobacco settlement funding and \$7,000,000 from Health Resources and Services Administration. There will be no change in the costs to the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not result in increased costs for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not result in increased costs for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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

902 KAR 45:065. Tattooing.

RELATES TO: KRS ~~[194A.050, 211.005, 211.015, 211.025, 211.760, 383.085, 387.010, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030]~~
STATUTORY AUTHORITY: KRS 194A.050(1), 211.760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of tattooing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to places of business that provide tattooing, tattooing equipment, the control of disease, parental consent and age restrictions for tattooing, and other matters necessary to protect public health: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health. This administrative regulation establishes the standards for tattooing.

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam.

(3) "Blood" is defined by 29 C.F.R. 1910.1030.

(4) "Bloodborne pathogen training" means training that meets the requirements established in 29 C.F.R. 1910.1030.

(5) "Contaminated" is defined by 29 C.F.R. 1910.1030.

(6) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.

(7) ~~["Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially infectious~~

material in the process of tattooing.

(8) "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection.

(8)(9) "Hand washing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.

(9)(40) "Instrument" means any tattooing implement that comes into contact with blood or skin to be tattooed such as needles, needle bars, needle tubes, or other implements used to insert pigment.

(10)(44) "Minor" is defined by KRS 387.010(1).

(11)(42) "Mobile studio" means a tattooing studio that is designed to be readily movable.

(12)(43) "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date[,] to render them free of all microorganisms.

(13)(44) "Registration" means the issuance of a document by the local health department to a tattoo artist authorizing the tattoo artist to engage in the business of tattooing.

(14) "Regulated waste" is defined by 29 C.F.R. 1910.1030.

(15) "Service animal" is defined by 28 C.F.R. 36.104.

(16) "Sterilization" means a validated process used to render a product free from viable microorganisms.

(17) "Studio" means a facility as defined by KRS 211.760(1)(b).

(18) "Studio certificate[certification]" means the [issuance of a] document issued by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(19) "Studio owner" means:

- (a) An owner of a facility where tattooing is conducted;
- (b) A sole proprietor who performs tattooing; or
- (c) A person who employs tattoo artists.

(20) "Tattoo artist" means a person registered by the local health department to engage in tattooing.

(21) "Tattooing" is defined by KRS 211.760(1)(c).

(22) "Temporary permit" means a permit to operate at a fixed location for no more than seven (7) calendar days, and that:

- (a) Is nontransferable; and
- (b) Cannot be renewed for ninety (90) days after the expiration.

(23) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration of Tattoo Artist. (1) A person shall not advertise or solicit business with the intent to perform tattooing, or use or assume the title of tattooist, unless registered with the local health department in the district or county where the person is to tattoo.

(2) All tattooing shall be under the auspices of a Kentucky certified studio.

(3) A tattoo artist shall not engage in the act of tattooing unless that person has proof of completion of bloodborne pathogen training.

(4) The artist shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration as a tattoo artist shall be at least eighteen (18) years of age at the time of application.

(6) An applicant for registration shall submit to the local health department in the district or county where the applicant intends to perform tattooing:

(a) A completed DFS-303, Application for Certification or Registration available at <https://www.chfs.ky.gov/agencies/dph/dafm/Pages/lhdddocuments.aspx>;

(b) Payment of \$100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.

(7) The tattoo artist registration shall be:

(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and

(c) Nontransferable from one (1) person to another, or from one

(1) district or county to another.

(8) Each registration shall be valid for one (1) calendar year and expire on December 31st of each year.

(9) A late renewal fee of fifty (50) dollars shall be assessed on each tattoo artist registration renewal application not received by January 31st each year.

Section 3. Studio Certification. (1) A person shall not engage in the business of tattooing unless the owner of the facility holds a studio certificate[certification] issued by the local health department in the district or county where the person is to tattoo.

(2) A holder of a studio certificate[certification] issued under this administrative regulation shall not allow a person to tattoo unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) An application for a studio certificate[certification] shall be:

(a) On DFS-200, Application for Permit or License available at <https://www.chfs.ky.gov/agencies/dph/dafm/gendocs/DFS200.pdf>;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

- 1. \$400 for the studio with one (1) to four (4) work stations; and
- 2. An additional fifty (50) dollars for each additional work station over four (4).

(4) A studio certificate[certification] shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) The studio certificate[certification] shall be:

- (a) Prominently displayed to the public in the studio; and
- (b) Nontransferable from one (1) person to another, or from one (1) location to another.

(6) The studio certificate[certification] shall expire December 31st each year.

(7) A late renewal fee of \$100 shall be assessed on each studio certificate[certification] renewal application not received by January 31st each year.

Section 4. Studio Requirements. (1) A studio shall:

- (a) Be kept clean and in good repair;
- (b) Be free of insect and rodent infestation;
- (c) Store only items necessary to its operation and maintenance;
- (d) Provide artificial light of at least twenty (20) foot-candles;
- (e) Be well ventilated;
- (f) Not permit the presence of a pet or other animal in the studio, except for a service animal;
- (g) Not use a room otherwise used as living or sleeping quarters;
- (h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;
- (i) Have convenient, clean, and sanitary toilet and hand-washing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, covered waste receptacle, and self-closing door;
- (j) Be organized to keep clean areas separate from contaminated areas;
- (k) Have a utility sink that shall only be used to wash contaminated instruments;
- (l) Use, clean, and maintain equipment according to manufacturers' recommendations;
- (m) Use an approved disinfectant;
- (n) Have plumbing sized, installed, and maintained in accordance with 815 KAR Chapter 20;
- (o) Have sufficient potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8; and
- (p) Dispose of sewage, including liquid waste, by connection to:
 - 1. A public sewer system, if available; or
 - 2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

(2) A workstation shall:

- (a) Have nonporous, smooth, easy-to-clean floors and walls;
- (b) Have surfaces, including counters, cabinets, chairs, and

dispensers, composed of smooth, nonporous material able to withstand repeated cleaning and disinfecting;

(c) Be kept clean, organized, and in good repair;

(d) 1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, retain the original container on the studio premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high between workstations;

(f) Have 100 foot-candles of light at the procedure level;

(g) Have unimpeded access to a hand sink;

(h) Have a sink for each artist with hot and cold water, delivered by a faucet, operated by wrist, knee, or foot action, or other hands-free method;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single-use paper towels dispensed from a sanitary dispenser;

and

2. A hand sink shall not be used for any other purpose;

(i) Be designated as a tattoo workstation, and shall not be used for any other purpose;

(j) Have plastic or metal waste receptacles:

1. With or without a lid; and

2. If the waste receptacle has a lid, the lid shall be foot operated;

and

(k) Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio using any reusable instruments, materials, or supplies may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An ultrasonic cleaner; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments and equipment.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

2. The cleaning area shall be equipped in accordance with paragraph (a)1. of this subsection.

3. The ultrasonic cleaner shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items.

(2) A studio that uses only presterilized~~pre-sterilized~~ disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(3) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized on the handles.

(4) Instruments shall be processed as follows:

(a) Soak contaminated reusable instruments in a covered container of cool water with detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms;

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

(d) Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e) Take instruments apart and rinse in warm water;

(f) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic

cleaner liquid after each use;

(g) Wash hands and forearms;

(h) Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, allow to air dry; and

(i) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(5) Autoclave equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments;

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization as verified by a negative spore test.

(6)(a) Reusable instruments placed in contact with skin that is tattooed shall be cleaned and sterilized;

(b) Disinfection shall not be used in place of cleaning and sterilization; and

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(7) Instrument sterilization. Instruments that touch skin to be tattooed shall be sterilized as follows:

(a) Wash hands and forearms;

(b) Use clean disposable, single-use gloves, such as surgical or examination gloves;

(c) Package cleaned instruments individually in:

1. Paper-and-plastic peel-pack with color change indicator; or

2. Package as set-ups with color change indicator;

(d) Label with content, date, lot number, and preparer's initials;

(e) Load the sterilizer and process according to the manufacturer's directions;

(f) Remove the items from autoclave only when completely dry and cool;

(g) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and

(h) 1. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and

2. New packaging shall be used when instruments are resterilized.

(8) Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested:

1. During the initial installation;

2. After any major repair; and

3. At least monthly by using a commercial biological monitoring system;

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on sterilizer log.

(9) Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;

(c) Preparer's name;

(d) The general contents of the load;

(e) The exposure time and temperature or the sterilizer recording chart or tape; and

(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude any tattoo artist who is:

(a) Infected with a disease in a communicable form that can be transmitted by blood;

(b) A carrier of organisms that cause disease;

(c) Infected with a boil or an infected wound; or

(d) Diagnosed with an acute respiratory infection;

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review, and distribute tattoo artist registrations for artists registered with~~issued for employees of~~ the certified studio. If

the artist is no longer ~~registered with~~~~[employed by]~~ the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

(4) Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:

- (a) Full name;
- (b) Date of birth;
- (c) Home address;
- (d) Phone number;
- (e) Email address if available;
- (f) Photograph of tattoo artist; and
- (g) Complete description of all tattooing procedures performed by the tattoo artist;
- (5) Maintain a current copy of this administrative regulation at the studio for use by tattoo artists;
- (6) Maintain an adequate supply of sterilized needles and tubes for each artist;
- (7) Not resterilize or reuse single-use, disposable components; and
- (8) If presterilized, disposable instruments are utilized, the following records shall be maintained and made available at all times to the local health department:

(a) An accurate inventory of all purchased presterilized instruments by name with the date purchased and the quantity on hand; and

(b) Invoices for the purchase of all purchased presterilized instruments.

Section 7. Tattooing of Minors. (1) A person shall not perform any tattoo procedure on a minor without custodial parent or legal guardian~~[parental]~~ consent.

(2) A minor shall be at least sixteen (16) years old with custodial parent or legal guardian consent prior to tattooing.

(3) Consent shall be provided by a written notarized statement that contains an official seal or assigned identification of the notary.

(4) The notarized statement shall contain:

- (a) The printed name of the custodial parent or legal guardian;
- (b) The government issued photo identification number of the custodial parent or legal guardian;
- (c) The address and phone number of the custodial parent or legal guardian;
- (d) The printed name of the minor child;
- (e) The date of birth of the minor child;
- (f) The government issued photo identification number of the minor child, if applicable;
- (g) A statement that the custodial parent or legal guardian is fully aware of the tattoo procedure and gives his or her consent for the procedure to be performed;
- (h) The signature of the custodial parent or legal guardian; and
- (i) The date of the signature of the custodial parent or legal guardian.

(5) The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section 8(3)(g) of this administrative regulation.

Section 8. Client Information and Records. (1) Before receiving a tattoo, the client shall be provided written information that:

- ~~(a) Tattooing poses a risk of infection;[that]~~
- ~~(b) Tattooing is permanent;[and] and[that]~~
- ~~(c) Removal of a tattoo may leave scars.~~

(2) Before the application of a tattoo, the client shall be provided written, verbal, or electronic aftercare instructions that includes~~[-the following information]:~~

- (a) Information on the care of the site of the tattoo;
- (b) Instructions on possible side effects;
- (c) Information on any restrictions;
- (d) Information on signs and symptoms of infection; and
- (e) Instructions to consult a physician if signs and symptoms of infection, such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any tattoos shall be kept by the studio owner. The record shall include~~[-the following~~

information]:

- (a) Studio name and certificate~~[certification]~~ number;
- (b) The date the procedure was performed;
- (c) Client's name, date of birth, address, and phone number;
- ~~(d) 1. Copy of client's government issued photo ID, if applicable;~~

or

2. Copy of custodial parent or legal guardian's government issued photo ID;

- (e) Name of the tattoo artist who performed the procedure;
- (f) The type, location, and description of the procedure; and
- (g) Client's attestation to the fact that the client:
 - 1. Is not intoxicated or under the influence of drugs or alcohol;
 - 2. Is not pregnant; and
 - 3. Has not ingested an anticoagulant that thins the blood or interferes with blood clotting within the past twenty-four (24) hours.
- (4) Records of each client shall be maintained for two (2) years.
- (5) Client records and consent and other required records shall be made readily available to inspectors.

Section 9. Disposal of Regulated~~[Contaminated]~~ Wastes. All wastes produced during the process of tattooing shall be separated for disposal into two (2) classifications as established in this section.

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company.

(2) Regulated~~[Contaminated]~~ waste shall be bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Tattooing. (1) Tattooing shall not be applied on skin that has a rash, pimples, evidence of infection, open lesions, sunburn, or manifests any evidence of an unhealthy condition without written clearance by a licensed medical provider.

(2) The tattoo artist shall follow the procedures listed in this section in preparation for tattooing.

(a) The tattoo artist and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product in the workstation.

(b) The tattoo artist shall wash hands and forearms prior to and after every procedure.

(c) The tattoo artist shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the application of the tattoo:

- 1. Both gloves shall be removed immediately and discarded;
- 2. The hands and forearms shall be washed; and
- 3. New, clean examination gloves shall be used.

(d) The tattoo artist shall use a new disposable lap cloth, drape, or apron for each client. All lap cloths, drapes, and aprons shall be stored in a closed cabinet or container until used.

(e) The tattoo artist shall wear clean clothing.

(3) All instruments, equipment, and items to be used in the procedure shall be placed on plastic film or a disposable, plastic backed towel.

(4) All inks, dyes, and pigments used in a procedure shall be:

- (a) Nontoxic;
- (b) Dispensed from containers in a manner to prevent contamination of the unused portion in the supply bottle; and
- (c) Discarded:

- 1. After the procedure; or
- 2. When the original container label becomes unreadable.

(5) Inks, dyes, and pigments transferred from bulk containers shall be labeled with:

- (a) Manufacturer name;
- (b) Lot number; and
- (c) A statement of nontoxicity.
- (6) All devices used to apply inks, dyes, or pigments shall be designed to prevent backflow of inks or pigments into the machine.

(7) If a workstation rinse cup is used, a fresh cup shall be used for each client and discarded immediately upon completion of the procedure.

(8) All single-use ointment tubes, applicators, and supplies

placed on the plastic backed towel shall be discarded immediately after use.

(9) Tattoo needles shall be used once and discarded.

(10) If the tattoo artist uses any reusable components, autoclave equipment shall be required.

(11) The sharps container and waste receptacle shall be positioned to be within easy reach and in a manner to prevent contamination.

Section 11. Application of the Tattoo. The tattoo artist shall use the procedure in this section when applying a tattoo.

(1) Disinfect the chair or table and tray.

(2) Position the client.

(3) Arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic backed towel within easy reach.

(4) Wash hands and forearms, and use new, clean examination gloves.

(5) Gently clean the client's skin with soap and water and apply an antiseptic that is appropriate for the area where the tattoo is to be applied. If shaving is necessary, use a new, single-use disposable razor.

(6) Acetate or other reusable stencils shall not be used. Place the design on the skin by one (1) of the following methods:

(a) Free-hand drawing using a new disposable marker; or

(b) Apply a single-use hectographic or tissue stencil using an approved product dispensed from a container in a manner that does not contaminate the unused portion.

(7) Remove gloves, wash hands, and use new clean examination gloves.

(8) Open sterile needles in front of the client and place them into the tattoo machine without touching the end of the needles.

(9) Apply the tattoo.

(10) Apply a thin layer of suitable cream and if appropriate, cover the area with a suitable nonstick dressing. Plastic film intended for household use shall not be used.

(11) When the tattooing is complete, the tattoo artist shall answer any questions and provide the client with instructions regarding the tattoo and aftercare.

(12) Immediately after the client leaves the workstation, the tattoo artist shall break down the workstation, properly dispose of any sharps, soak any reusable instruments for later cleaning, and clean and disinfect any surface that may have become contaminated.

Section 12. Standard Operating Procedures for a Mobile Studio.

(1) An application for mobile studio certificate[certification] shall be:

(a) On DFS-200, Application for Permit or License;

(b) Submitted to the local health department in the district or county where the mobile studio owner resides; and

(c) Accompanied by a fee of:

1. \$400 for the studio with one (1) to four (4) workstations[work stations]; and

2. An additional fifty (50) dollars for each additional workstation[work station] over four (4).

(2) The mobile studio certificate[certification] shall be:

(a) Valid for statewide operation;

(b) Prominently displayed to the public in the mobile studio; and

(c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of \$100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, the tattoo artist shall be registered with the local health department in each district or county where the mobile studio is operated, and pay the appropriate fees.

(6) The mobile studio shall be used exclusively for performing tattooing. Habitation, cooking, and animals, except service animals, shall not be allowed in the mobile studio.

(7) The mobile studio shall:

(a) Meet the sterilization, operating, and clientele requirements, and tattoo performance procedures as a stationary studio; and

(b) Be inspected by the local health department prior to operation.

(8) Any on-board restroom shall be supplied with hot running water and cold running water and shall be supplied with toilet paper, liquid soap, single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(9) If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with hand-washing facilities.

(10) All plumbing shall comply with the requirements of 815 KAR Chapter 20.

(11)(a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for hand washing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted with a backflow prevention device.

(12)(a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.

Section 13. Standard Operating Procedures for a Temporary Permit. (1) The event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or License, accompanied by a \$100 permit fee for each workstation;

(b) A layout of the event floor showing where the tattoo artists will be tattooing;

(c) A list of all tattoo artists participating in the event that includes:

1. Name of tattoo artist;

2. Artist date of birth;

3. Home address;

4. Phone number;

5. Email address;

6. Proof of artist completion of bloodborne pathogen training;

7. Studio name;

8. Studio address;

9. Studio owner name; and

10. Description of procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall:

(a) Be responsible for ensuring that the event is run in a manner that is safe for the tattoo artists and the general public;

(b) Provide a separate cleaning and sterilization room as a backup, unless only presterilized[pre-sterilized] disposables are used for the event;

(c) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(d) Arrange for pick-up and disposal of regulated[contaminated] waste in accordance with Section 9 of this administrative regulation; and

(e) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(3) Prior to the event, the tattoo artist participating in the event shall:

(a) Be registered in accordance with Section 2 of this administrative regulation with the local health department in the district or county where the temporary studio is operated;

(b) Submit the \$100 registration fee required by Section 2(6)(b) of this administrative regulation; and

(c) 1. Ensure an adequate supply of presterilized instruments and supplies are available to last the length of the event; or

2. Provide certification of an autoclave negative spore test completed within thirty (30) days prior to the event if tattooing with reusable instruments.

(4) The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5 ft. x 10 ft., and be constructed in a manner to separate the tattoo artist from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during tattooing;

(b) Have a floor and sides that are:

1. Smooth, nonporous, and easy to clean; or

2. Covered in plastic if the floor and sides are not smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the procedure level; and

(d) Be equipped with a hand-wash facility that shall be:

1.a. A portable hand-washing station; or

b. A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i) Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is supplied with a bucket to catch the wastewater; and

(iii) Has a minimum reserve of five (5) gallons warm potable water available; and

2. Supplied with:

a. Liquid soap; and

b. Single-use paper towels from a sanitary dispenser.

(5) Wastewater shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

Section 14. Inspection of Studios. (1) At least twice per year, the cabinet or the local or district health department shall inspect each studio and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet or the local or district health department inspector shall record the inspection findings on an inspection report form DFS-342.

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original inspection report to the certificate holder or the holder's designee. The findings shall:

(a) Set forth the specific violations if found; and

(b) Establish a period of time for the correction of the violations specified, pursuant to the provisions established in this paragraph.

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) but not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within

ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.

(6) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the certificate or the individual's registration.

(7) Temporary and mobile studios shall correct any violative conditions within twenty-four (24) hours.

Section 15. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the certificate holder or registered individual if:

(a) The cabinet or the local or district health department has reason to believe that an imminent public health hazard exists;

(b) The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c) An inspection of a studio reveals a rating score of less than sixty (60).

(2) The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference in accordance with 902 KAR 1:400.

(3) The cabinet or the local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference is requested.

~~[(4) A person whose studio certificate or individual registration has been suspended may, at any time, make application for reinstatement of the certification or registration in accordance with 902 KAR 1:400, Section 2.]~~

Section 16. Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the local or district health department shall notify the studio certificate holder or registered ~~artist[individual]~~, in writing, stating the reasons ~~[for which]~~ the studio ~~certificate[certification]~~ or individual registration is subject to revocation and advising that the studio ~~certificate[certification]~~ or individual registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference is filed with the cabinet by the ~~certificate[certification]~~ or registration holder within the ten (10) day period.

(3) A studio ~~certificate[certification]~~ or individual registration may be suspended for cause pending its revocation or an administrative conference relative to the revocation.

~~Section 17. [Appeals. A studio certificate or individual registration holder or an applicant aggrieved by a decision of the cabinet or the local or district health department may request an administrative hearing in accordance with 902 KAR 1:400.~~

~~Section 18.] Incorporation by Reference.~~

(1) The following material is incorporated by reference:

(a) [DFS-200, "Application for Permit or License", 07/19;

(b) DFS-303, "Application for Certification or Registration", Rev. 9/23[2/19]; and

(b)(e) DFS-342, "Tattoo and Body Piercing Studio Inspection Report", Rev. 2/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Public[Food] Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://chfs.ky.gov/agencies/dph/dafrn/Pages/lhdddocuments.aspx>.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 16, 2023

FIELD WITH LRC: September 13, 2023 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for tattooing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all tattooing performed in Kentucky is done by an artist registered with the local or district health department. This administrative regulation also ensures that all tattoo studios are certified and inspected by the local or district health department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all tattooing is done in a safe and sanitary manner.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that a studio owner is required to maintain the registration for the tattoo artist even if that individual is not considered an employee of the studio, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure that all tattoo artists are properly registered with the local or district health department, and to update the material incorporated by reference. The "Application for a Permit or License", submitted by a studio owner, is incorporated by reference in 902 KAR 10:040, and the amendment to this administrative regulation removes this form from the list of material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.760(2) requires that no person shall engage in, offer to engage in, or carry on any business of tattooing of humans by nonmedical personnel without first registering with the local health department in the district or county in which the person is to perform tattooing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure the local or district health department is aware of all registered tattoo artists should there be a complaint or other issue.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact registered tattoo studio owners and registered tattoo artists as well as local health department inspectors. There are 599 registered tattoo studios and 1,640 registered tattoo artists.

(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: Tattoo artists and studio owners will need to be aware of the registration process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change in the cost to the registered tattoo artist or studio owner.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tattoo artists and studio owners will operate under a uniform standard for tattooing.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: There will be no continual cost to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars, local tax dollars, and revenue received from permit fees are the sources of funding for this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees established in this administrative regulation are not being increased. There are no new fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is applied to the studio certification fee. Studios that have more than four (4) workstations will pay an additional fee for each workstation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts all local and district health departments, and the Public 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 194A.050(1) and 211.760.

(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 combined revenue received from the tattoo artist registration and the studio certification is approximately \$403,600 per 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 combined revenue received from the tattoo artist registration and the studio certification is approximately \$403,600 per year.

(c) How much will it cost to administer this program for the first year? The total cost to the cabinet and local health departments is approximately \$417,600 per year.

(d) How much will it cost to administer this program for subsequent years? The total cost to the cabinet and local health departments is approximately \$417,600 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Studio owners will pay a minimum of \$400 per year for certification. Tattoo artists will pay \$100 per year to register with the local health department.

(d) How much will it cost the regulated entities for subsequent years? There will be no increase in costs to studio owners or tattoo artists in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 28 C.F.R. Part 36 – Nondiscrimination on the basis of disability by public accommodations and in commercial facilities under the Americans with Disabilities Act (ADA); and 29 C.F.R. 1910.1030 Occupation Safety and Health Standards.

(2) State compliance standards. KRS 211.760 authorizes the cabinet to promulgate administrative regulations relating to the health and cleanliness of places of business in which tattooing, body piercing or both are performed, procedures to prevent the spread of disease or infection during or relating to tattooing and body piercing procedures, and such other administrative regulations as may be necessary to protect public health.

(3) Minimum or uniform standards contained in the federal mandate. The ADA requires a public accommodation to take the steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently. The federal regulations regarding bloodborne pathogens applies to all occupational exposure to blood or other potentially infectious materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose any stricter requirements, or additional or different responsibilities or requirements.

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

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

902 KAR 45:070. Body piercing and ear piercing.

RELATES TO: KRS [194A.050, 211.005, 211.015, 211.025, 383.085, 387.010, 508.125, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030
STATUTORY AUTHORITY: KRS 194A.050(1), 211.760

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of body piercing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to places of business that provide body piercing or ear piercing, the equipment used in body piercing and ear piercing, the control of disease, parental consent for body piercing or ear piercing, the age restrictions for body piercing, and other matters necessary to protect public health[-: (a) health and cleanliness of places of business; (b) sterilization of body piercing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent body piercing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health]. This administrative regulation establishes the standards for body piercing and ear piercing[required by KRS 211.760(3)].

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam.

(3) "Blood" is defined by 29 C.F.R. 1910.1030.

(4) "Bloodborne pathogen training" means training that meets the requirements established in 29 C.F.R. 1910.1030.

(5) "Body piercer" means a person registered by the local health department.

(6) "Body piercing" is defined by KRS 211.760(1)(a).

(7) "Contaminated" is defined by 29 C.F.R. 1910.1030[means the presence of or reasonably expected presence of blood or other potentially infectious material in or on the surface of an item].

(8) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.

(9) ["Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially infectious material in the process of body piercing.

(10)] "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection.

[(11)] "Ear piercing" means a process by which the lobe or outer perimeter of the ear is pierced by use of a hand-pressured instrument utilizing presterilized earrings.]

(10) [(12)] "Ear piercing instrument" or "piercing instrument" means a hand-pressured instrument, which does not make contact

with the client, utilizing encapsulated presterilized earrings used exclusively for piercing the lobe of the ear.

(11)[(43)] "Handwashing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.

(12)[(44)] "Instrument" means any body-piercing implement that comes into contact with blood or skin to be pierced such as needles, needle tubes, forceps, hemostats, tweezers, or other implements used to puncture or pierce the human body.

(13)[(45)] "Jewelry" means any personal ornament or decoration inserted into a newly-pierced area.

(14) "Limited ear piercing" means piercing only the lobe of the ear with an ear piercing instrument.

(15)[(46)] "Minor" is defined by KRS 387.010(1).

(16)[(47)] "Mobile studio" means a body-piercing studio that is designed to be readily movable.

(17)[(48)] "Purchased presterilized" means jewelry or instruments[procedure set-ups] that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date to render them free of all microorganisms.

(18)[(49)] "Registration" means the issuance of a document by the local health department to a body piercer or ear piercer authorizing the person named in the document to engage in the business of body piercing or ear piercing.

(19) "Regulated waste" is defined by 29 C.F.R. 1910.1030.

(20) "Service animal" is defined by 28 C.F.R. 36.104.

(21) "Sterilization" means a validated process used to render a product free from viable microorganisms.

(22) "Studio" means a facility as defined by KRS 211.760(1)(b).

(23) "Studio certificate[certification]" means the issuance of a document by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(24) "Studio owner" means:

(a) An owner of a facility where body piercing or ear piercing is conducted;

(b) A sole proprietor who performs body piercing or ear piercing; or

(c) A person who employs body piercers or ear piercers.

(25) "Temporary permit" means a permit to operate at a fixed location for no more than seven (7) calendar days, and that:

(a) Is nontransferable; and

(b) Cannot be renewed for ninety (90) days after the expiration.

(26) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration. (1) A person shall not act as or engage in the business of body piercing or ear piercing unless registered with the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) All body piercing or ear piercing shall be under the auspices of a Kentucky certified studio.

(3) A body piercer or ear piercer shall not engage in the act of piercing unless that person has proof of completion of bloodborne pathogen training.

(4) The body piercer or ear piercer shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration shall be at least eighteen (18) years of age at the time of application.

(6) An applicant for registration shall submit to the local health department in the district or county where the applicant intends to perform body piercing or ear piercing:

(a) A completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065;

(b) Payment of \$100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.

(7) The body piercer or ear piercer registration shall be:

(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and

(c) Nontransferable from one (1) person to another, or from one

(1) district or county to another.

(8) A registration shall be valid for one (1) calendar year and expire on December 31st of each year.

(9) A late renewal fee of fifty (50) dollars shall be assessed on each body piercer or ear piercer certification renewal application not received by January 31st each year.

Section 3. Studio Certification. (1) A person shall not engage in the business of body piercing or ear piercing unless the owner of the facility holds a studio certificate[certification] issued by the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) A holder of a studio certificate[certification] issued under this administrative regulation shall not allow a person to engage in body piercing or ear piercing unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) An application for a studio certificate[certification] shall be:

(a) On DFS-200, Application for Permit or License available at <https://www.chfs.ky.gov/agencies/dph/dafm/gendocs/DFS200.pdf>; incorporated by reference in 902 KAR 45:065;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. \$400 for a body piercing studio with one (1) to four (4) work stations;

2. \$200 for an ear piercing studio with one (1) to four (4) work stations; and

3. An additional fifty dollars (\$50) for each additional work station over four (4).

(4) A studio certificate[certification] shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) A studio certificate[certification] shall be:

(a) Prominently displayed to the public in the studio; and

(b) Nontransferable from one (1) person to another, or from one (1) location to another.

(6) The studio certificate[certification] shall be valid for one (1) calendar year and expire December 31st each year.

(7) A late renewal fee of one-half (1/2) the annual inspection fee shall be assessed on each studio registration renewal application not received by January 31st each year.

Section 4. Studio Requirements. (1) A studio shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles;

(e) Be well ventilated;

(f) Not permit the presence of an animal in the studio, except for a service animal;

(g) Not use a room otherwise used as living or sleeping quarters;

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;

(i) Have convenient, clean, and sanitary toilet and handwashing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, a covered waste receptacle, and a self-closing door;

(j) Be organized to keep clean areas separate from contaminated areas;

(k) Have a utility sink that shall only be used to wash contaminated instruments;

(l) Use, clean, and maintain equipment according to manufacturers' recommendations;

(m) Use an approved disinfectant;

(n) Have plumbing sized, installed, and maintained in accordance with 815 KAR Chapter 20;

(o) Have sufficient potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8; and

(p) Dispose of sewage by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated

pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

(2) A workstation shall:

- (a) Have nonporous, smooth, easy-to-clean floors and walls;
- (b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of smooth, nonporous material able to withstand repeated cleaning and disinfecting;
- (c) Be kept clean, organized, and in good repair;
- (d) 1. Have all product containers clearly labeled with common product name in English; and
- 2. If filling a product container from a larger bulk container, retain the original container on the premises;
- (e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high between workstations;
- (f) Have 100 foot-candles of light at the procedure level;
- (g) Have unimpeded access to a hand sink;
- (h) Have a sink for each body piercer with hot and cold water, delivered by a faucet, operated by wrist, knee, or foot action, or other hands-free method;
 - 1. Each sink shall be supplied with:
 - a. Liquid soap; and
 - b. Single use paper towels dispensed from a sanitary dispenser; and
 - 2. A hand sink shall not be used for any other purpose;
 - (i) Be designated as a body piercing workstation, and shall not be used for any other purpose;
 - (j) Have plastic or metal waste receptacles:
 - 1. With or without a lid; and
 - 2. If the waste receptacle has a lid, the lid shall be foot operated; and
 - (k) Have a container for disposable sharps that:
 - 1. Is rigid, puncture proof, and leak proof on sides and bottom;
 - 2. Is closeable and sealable; and
 - 3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio using any reusable instruments, materials, or supplies may have a one (1) room or two (2) room cleaning and sterilization arrangement.

- (a) A two (2) room arrangement shall have:
 - 1. One (1) room for contaminated items, equipped with:
 - a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;
 - b. A hand sink;
 - c. A presoak container;
 - d. An ultrasonic cleaner; and
 - e. Autoclaving packaging materials; and
 - 2. A second room that contains an[for] autoclave for sterilization of instruments, equipment, and body jewelry or decorations.
- (b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.
 - 1. The ultrasonic cleaner shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, jewelry, or other items.
 - 2. The cleaning area shall be equipped in accordance with paragraph (a)1. of this subsection.
 - 3. Nonporous barriers may be utilized to delineate the two (2) distinct areas.
- (2) A body piercer that shares a certified studio with a tattoo artist shall have a dedicated ultrasonic cleaner for cleaning body piercing instruments or equipment.
- (3) A studio that uses only presterilized[pre-sterilized] disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.
- (4) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized on the handles.
- (5) Instruments shall be processed as follows:
 - (a) Soak contaminated reusable instruments in a covered container of cool water with detergent until ready to be cleaned and sterilized;

- (b) Wash hands and forearms;
- (c) Use disposable, single-use gloves such as examination or surgical gloves;
- (d) Prepare the ultrasonic cleaner according to manufacturer's instructions;
- (e) Take instruments apart and rinse in warm water;
- (f) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;
- (g) Wash hands and forearms;
- (h) Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, and allow to air dry; and
- (i) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.
- (6) Sterilization equipment. Equipment used to sterilize instruments shall meet the following requirements:
 - (a) The equipment was sold as sterilizing equipment for medical instruments;
 - (b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and
 - (c) The equipment meets the minimum requirements for sterilization.
- (7) Reusable instruments.
 - (a) Reusable instruments that come in contact[placed in contact] with skin that is body pierced shall be cleaned and sterilized;
 - (b) Disinfection shall not be used in place of cleaning and sterilization; and
 - (c) Liquid sterilants shall not be used for sterilization of reusable instruments.
- (8) Instrument sterilization. Instruments that come in contact with[pierce] the skin shall be sterilized as follows:
 - (a) Wash hands and forearms;
 - (b) Use clean disposable, single-use surgical or examination gloves;
 - (c) Package cleaned instruments individually in:
 - 1. Paper and plastic peel-packs with color change indicator; or
 - 2. Package as setups[set-ups] with color change indicator;
 - (d) Label with content, date, lot number, and preparer's initials;
 - (e) Load the autoclave[sterilizer] and process according to manufacturer's directions;
 - (f) Remove the items from autoclave only when completely dry and cool;
 - (g) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and
 - (h)
 - 1. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and
 - 2. New packaging shall be used when instruments are resterilized.
- (9) Sterilization equipment monitoring.
 - (a) Sterilization equipment shall be tested:
 - 1. During the initial installation;
 - 2. After any major repair; and
 - 3. At least monthly by using a commercial biological monitoring system;
 - (b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and
 - (c) Sterilization monitoring shall be noted on the sterilizer log.
- (10) Autoclave[Sterilizer] recordkeeping. An autoclave[A sterilizer] log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:
 - (a) Date of load;
 - (b) Lot number;
 - (c) Preparer's name;
 - (d) The general contents of the load;
 - (e) The exposure time and temperature or the sterilizer recording chart or tape; and
 - (f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a

certified studio shall:

- (1) Exclude a body piercer or ear piercer who is:
 - (a) Infected with a disease in a communicable form that can be transmitted by blood;
 - (b) A carrier of organisms that cause disease;
 - (c) Infected with a boil or an infected wound; or
 - (d) Diagnosed with an acute respiratory infection;
- (2) Report any accident involving exposure to body fluids to the local or district health department;
- (3) Receive, review, and distribute body piercer or ear piercer registrations ~~for the piercer registered with~~~~[issued for employees of]~~ the certified studio. If the body piercer or ear piercer is no longer ~~registered with~~~~[employed by]~~ the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;
- (4) Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:
 - (a) Full name;
 - (b) Date of birth;
 - (c) Home address;
 - (d) Phone number;
 - (e) Email address;
 - (f) Photograph of body piercer or ear piercer; and
 - (g) Complete description of all body piercing or ear piercing procedures performed by the body piercer or ear piercer;
- (5) Maintain a current copy of this administrative regulation at the studio for use by body piercers or ear piercers;
- (6) Maintain an adequate supply of sterilized needles, instruments, jewelry, and other decorations for each piercer;
- (7) Not resterilize or reuse single-use, disposable components;
- (8) Maintain records in accordance with Section 8(3) of this administrative regulation;
- (9) Maintain an accurate inventory of all purchased presterilized instruments and jewelry by name with the date purchased and the quantity on hand; and
- (10) Maintain invoices for the purchase of all purchased presterilized instruments and jewelry.

Section 7. Piercing of Minors. (1) A person shall not:

- (a) Perform any body piercing or ear piercing procedure on a minor without custodial parent or legal guardian~~[parental]~~ consent; and
 - (b) In accordance with KRS 508.125, perform any genital piercing on a female who is under eighteen (18) years of age.
- (2) A minor shall be at least sixteen (16) years old with custodial parent or legal guardian consent prior to body piercing, with the exception of piercing the lobe of the ear.
- (3) Consent shall be provided by a written notarized statement that contains an official seal or assigned identification of notary.
- (4) The notarized statement shall contain:
- (a) The printed name of the custodial parent or legal guardian;
 - (b) The government issued photo identification number of the custodial parent or legal guardian;
 - (c) The address and phone number of the custodial parent or legal guardian;
 - (d) The printed name of the minor child;
 - (e) The date of birth of the minor child;
 - (f) The government issued photo identification number of the minor child, if applicable;
 - (g) A statement that the custodial parent or legal guardian is fully aware of the body piercing procedure and gives their consent for the procedure to be performed;
 - (h) The signature of the custodial parent or legal guardian; and
 - (i) The date of the signature of the custodial parent or legal guardian.
- (5) The custodial parent or legal guardian~~[-and minor client]~~ shall complete the attestation requirements of Section 8(3)(g) of this administrative regulation.

Section 8. Client Information and Records. (1) Before receiving a body piercing or ear piercing, the client shall be provided written information that the piercing poses a risk of infection.

(2) Before the body piercing or ear piercing, the client shall be provided written, verbal, or electronic aftercare instructions that include the following information:

- (a) Information on the care of the site of the piercing;
- (b) Instructions on possible side effects;
- (c) Information on any restrictions;
- (d) Information on signs and symptoms of infection; and
- (e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any body piercings or ear piercings shall be kept by the studio owner. The record shall include the following information:

- (a) Studio name and registration number;
- (b) The date the procedure was performed;
- (c) Client's name, date of birth, address, and phone number;
- (d) 1. Copy of client's government issued photo ID, if applicable;

or

2. Copy of custodial parent or legal guardian's government issued photo identification;

(e) Name of the body piercer or ear piercer who performed each procedure;

(f) The type, location, and description of the procedure; and

(g) ~~An~~~~[Client's]~~ attestation to the fact that the client:

1. Is not intoxicated or under the influence of drugs or alcohol; and

2. Has not ingested an anticoagulant that thins the blood or interferes with blood clotting within the past twenty-four (24) hours.

(4) Records of each client shall be maintained for two (2) years.

(5) Client records and consent and other required records shall be made readily available to inspectors.

Section 9. Disposal of Regulated~~[Contaminated]~~ Wastes. All wastes produced during the process of body piercing or ear piercing shall be separated for disposal into two (2) classifications as follows:

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company; and

(2) Regulated~~[Contaminated]~~ waste shall be bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Body Piercing.

(1) Sterile jewelry shall be:

(a) Made of implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium, or platinum;

(b) Free of scratches, nicks, or irregular surfaces; and

(c) Internally threaded or threadless.

(2) Body piercing shall not be performed on skin that has a rash, pimples, evidence of infection, open lesions, or sunburn, or manifests any evidence of an unhealthy condition without written clearance by a licensed medical provider.

(3)~~[(2)]~~ The body piercer shall follow the procedures listed in this section in preparation for body piercing:

(a) The body piercer and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product in the workstation;

(b) The body piercer shall wash hands and forearms prior to and after every procedure;

(c) The body piercer shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the body piercing, both gloves shall be removed immediately, discarded, hands and forearms washed, and new, clean examination gloves used;

(d) The body piercer shall wear clean clothing;

(e) All instruments, needles, jewelry, and items to be used in the procedure shall be placed on plastic film or on a plastic-backed towel;

(f) Only hollow needles shall be used for body piercing;

(g) Only presterilized jewelry shall be installed in a fresh piercing;

(h) ~~[Only sterile jewelry made of implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium, or platinum and~~

that is free of scratches, nicks, or irregular surfaces, and internally threaded or threadless, shall be placed in newly pierced skin;

(i) All single-use disposable items shall be placed on plastic film or on a [the] plastic backed towel and shall be discarded after each client including:

1. Corks;
2. Rubber bands;
3. Skin prepping materials;
4. Marking devices;
5. Dental bibs;
6. Tray covers;
7. Gauze; and
8. Applicators; and

(j) The sharps container and waste receptacle shall be positioned within easy reach and in a manner to prevent contamination.

Section 11. Performance of Body Piercing. The body piercer shall use the procedure in this section when performing a body piercing:

- (1) Disinfect the chair or table, and tray;
- (2) Wash hands and forearms;
- (3) Use new disposable gloves and arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic-backed towel within easy reach;
- (4) Position the client;
- (5) Clean the skin, mark the location of the piercing with a new, disposable marking device, and apply an antiseptic to the area to be pierced;
- (6) Remove and discard all materials used to prep the client, including gloves;
- (7) Wash hands and forearms and use new, clean examination gloves;
- (8) Hold or stabilize the tissue with sterile instruments only. Pierce the skin using a sterile, single-use piercing needle;
- (9) Immediately after use, place all needles, snip wires, or any other sharps into a sharps container;
- (10) When the body piercing is complete, answer any questions regarding the piercing and provide aftercare instructions to the client; and
- (11) Immediately after the client leaves the workstation, place contaminated instruments into a covered container that is labeled "contaminated instruments" and disinfect all surfaces that have come into contact with the client or the client's tissues, including the piercing tray, chair, or table.

Section 12. Standard Operating Procedures for Limited Ear Piercing. (1) A limited [An] ear piercing studio shall be exempt from Sections 5, 9(1), 10, and 11 of this administrative regulation.

(2) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the lobe of the ear.

(3) An ear piercer shall:

- (a) Be registered in accordance with Section 2 of this administrative regulation;
- (b) Not allow any eating, drinking, or use of tobacco products, an electronic cigarette, or other vapor producing product in the area where ear piercing is conducted;
- (c) Obtain consent for the procedure in accordance with Section 7 of this administrative regulation;
- (d) Obtain client information in accordance with Section 8 of this administrative regulation;
- (e) Wash their hands and forearms before and after each piercing is performed;
- (f) Wear new, clean disposable gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the ear piercing, both gloves shall be removed immediately, discarded, hands and forearms washed, and new, clean examination gloves used;
- (g) Wear clean clothing;
- (h) Load presterilized, encapsulated cartridges for earrings into the ear piercing instrument without touching the cartridge, stud, or clasp;
- (i) Answer any questions prior to performing an ear piercing;

(j) Clean the ear with an antiseptic towelette before the procedure and mark the location of the piercing with a single use disposable marking pen or a surgical marking pen sanitized by design such as an iodine-based or alcohol;

(k) Provide the client with instructions regarding aftercare; and

(l) Immediately after the client leaves the ear piercing area, thoroughly disinfect the piercing instrument with an approved disinfectant.

(4) When not in use, the piercing instrument shall be stored in a cabinet or other place that is protected from dust and contamination.

Section 13. Standard Operating Procedures for a Mobile Studio.

(1) An application for mobile studio certificate [certification] shall be:

(a) On DFS-200, Application for Permit or License, incorporated by reference in 902 KAR 45:065;

(b) Submitted to the local health department in the district or county where the mobile studio owner resides; and

(c) Accompanied by a fee of:

1. \$400 for the studio with one (1) to four (4) workstations [work stations]; and
2. An additional fifty dollars (\$50) for each additional workstation [work station] over four (4).

(2) The mobile studio certificate [certification] shall be:

- (a) Valid for statewide operation;
 - (b) Prominently displayed to the public in the mobile studio; and
 - (c) Nontransferable from one (1) person to another.
- (3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of \$100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, each body piercer and ear piercer shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.

(6) The mobile studio shall be used exclusively for performing body or ear piercing. Habitation, cooking, and animals, except service animals, shall not be allowed in the mobile studio.

(7) The mobile studio shall be inspected by the local health department prior to operation.

(8) Any onboard [on-board] restroom shall be supplied with hot and cold running water and shall be supplied with toilet paper, liquid soap and single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(9) If the vehicle lacks an onboard [on-board] restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with handwashing facilities.

(10) All plumbing shall comply with the requirements of 815 KAR Chapter 20.

(11)(a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for handwashing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted with a backflow prevention device.

(12)(a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.

Section 14. Standard Operating Procedures for a Temporary Permit. (1) At least thirty (30) days prior to the event date, the event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or License~~[-incorporated by reference in 902 KAR 45:065]~~, accompanied by a \$100 registration fee for each workstation;

(b) A layout of the event floor showing where body piercing and ear piercing will be performed;

(c) A list of all body piercers and ear piercers participating in the event that includes:

1. Name of body piercer or ear piercer;
2. Piercer's date of birth;
3. Home address;
4. Phone number;
5. Email address;
6. Proof of piercer completion of bloodborne pathogen training;
7. Studio name;
8. Studio address;
9. Studio owner name; and
10. Description of body piercing and ear piercing procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall be responsible for ensuring that the event is run in a manner that is safe for the body piercers, ear piercers, and the general public.

(3) Each participant who performs body or ear piercing shall bring enough presterilized instruments and supplies to last for the whole event.

(4) The event coordinator or studio owner shall:

(a) Provide a separate cleaning and sterilization room as a backup, unless only presterilized~~[pre-sterilized]~~ disposables are used for the event;

(b) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(c) Arrange for pickup~~[pick-up]~~ and disposal of regulated~~[contaminated]~~ waste in accordance with Section 9 of this administrative regulation; and

(d) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(5) The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5 ft. x 10 ft., and be constructed in a manner to separate the body and ear piercer from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during piercing.

(b) Have a floor and sides that are smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the level where the piercing is conducted;

(d) Be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that needs to be protected to prevent cross-contamination; and

(e) Be equipped with a hand-wash facility that shall be:

- 1.a. A portable handwashing station; or
- b. A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i) Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is supplied with a bucket to catch the wastewater; and

(iii) Has a minimum reserve of five (5) gallons of warm potable water available; and

2. Is supplied with:

- a. Liquid soap; and
- b. Single use paper towels from a sanitary dispenser.

(6) Waste water shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

Section 15. Inspection of Studios. (1) The cabinet or the local or district health department shall inspect each body piercing studio at least twice per year and each ear piercing studio once per year and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet or the local or district health department inspector shall record the inspection findings for body piercing studios on an inspection report form DFS-342, incorporated by reference in 902 KAR 45:065.

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original inspection report to the certificate holder or designee. The findings shall:

(a) Set forth the specific violations if found; and

(b) Establish a period of time for the correction of the violations specified, pursuant to the provisions established in this paragraph.

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) and not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5)(a) The cabinet or local health department inspector shall record the findings for limited ear piercing studios on inspection report form DFS-253.

(b) The inspection report form shall summarize the requirements of this administrative regulation.

(c) The inspector shall provide the original of the inspection report to the certificate holder or designee.

(d) The findings shall set forth the specific violations if found.

(e) All violations shall be corrected within twenty-four (24) hours.

(6) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.

(7) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the studio certificate or the individual's registration.

(8) A temporary or mobile studio shall correct any violative conditions within twenty-four (24) hours.

Section 16. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the holder if:

(a) The cabinet or the local or district health department has reason to believe that an imminent public health hazard exists;

(b) The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c) An inspection of a studio reveals a rating score of less than sixty (60).

(2) The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative ~~conference~~[hearing] in accordance with 902 KAR 1:400.

(3) The cabinet or the local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative ~~conference~~[hearing] is requested.

~~[(4) A person whose studio certificate or individual registration has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the certification or registration.]~~

Section 17. Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio ~~certificate~~[certification] or registration is subject to revocation and advising that the studio ~~certificate~~[certification] or registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative ~~conference~~[hearing] is filed with the cabinet by the ~~certificate~~[certification] or registration holder within the ten (10) day period.

(3) A studio ~~certificate~~[certification] or individual registration may be suspended for cause pending its revocation or an administrative hearing relative to the revocation.

~~Section 18. [Appeals. A certificate or registration holder or an applicant aggrieved by a decision of the cabinet or the local or district health department may request an administrative hearing in accordance with 902 KAR 1:400.~~

~~Section 19.]~~ Incorporation by Reference. (1) DFS-253, "Limited Ear Piercing Studio Inspection Report", Rev. 01/23[2/19], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, ~~Public~~[Food] Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 17, 2023

FILED WITH LRC: September 13, 2023 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards body piercing and ear piercing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all body piercing and limited ear piercing is performed in Kentucky is done in body piercer or limited ear piercer registered with the local or district health department. This administrative regulation also ensures that all body piercing and limited ear-piercing studios are certified and inspected by the local or district health department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of piercing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent piercing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all body piercing and limited ear piercing is done in a safe and sanitary manner.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the definition of limited ear piercing, adds that a body piercer may pierce the ear of a minor with parental consent, adds the prohibition of piercing the genitals of a female under the age of eighteen (18), and clarifies that a studio owner is required to maintain the registration for the piercer even if that individual is not considered an employee of the studio.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the proper registration of body piercers and ear piercers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.760(2) requires that no person shall engage in, offer to engage in, or carry on any business of body piercing of humans by nonmedical personnel without first registering with the local health department in the district or county in which the person is to perform body piercing. KRS 508.125(1)(e) defines "piercing" as female genital mutilation.

(d) How the amendment will assist in the effective administration of the statutes: The changed definition of limited ear piercing will allow body piercers to pierce the ear of a minor with consent. By adding the prohibition against piercing the genitalia of females under the age of eighteen (18) body piercers will be in compliance with KRS 508.125(1)(e).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact all registered studio owners, registered body piercers, registered limited ear piercers, as well as local health department inspectors. There are currently 108 registered body piercing or limited ear-piercing studios and 260 registered body piercers and limited ear piercers.

(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: Body piercers and studio owners will need to be aware of the changed rules for ear piercing and the prohibition of piercing the genitalia of females under the age of eighteen (18).

(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 new costs to body piercers and studio owners to comply with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Body piercers will be able to offer ear piercing to minors with parental consent, body piercers will be properly registered with a studio, and body piercers will be in full compliance with the laws of the commonwealth.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: There will be no additional costs to implement this administrative regulation on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars, local tax dollars, and revenue received from the permit fees are the sources of funding for this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not add any new fees. The current fees established in this administrative regulation are not changing.

(9) TIERING: Is tiering applied? Tiering is applied to the studio certification fee. Studios that have more than four (4) workstations will pay an additional fee for each workstation.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts all local and district health departments, and the Public 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 194A.050(1) and 211.760.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate approximately \$69,200 in revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate approximately \$69,200 in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The total cost to the cabinet and local health departments is approximately \$417,600 per year.

(d) How much will it cost to administer this program for subsequent years? The total cost to the cabinet and local health departments is approximately \$417,600 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Studio owners will pay a minimum of \$400 per year for certification. Body piercers and limited ear piercers will pay \$100 per year to register with the local health department.

(d) How much will it cost the regulated entities for subsequent years? There will be no increase in costs to studio owners or tattoo artists in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 28 C.F.R. Part 36 – Nondiscrimination on the basis of disability by public accommodations and in commercial facilities under the Americans with Disabilities Act (ADA); and 29 C.F.R. 1910.1030 Occupation Safety and Health Standards.

(2) State compliance standards. KRS 211.760 authorizes the cabinet to promulgate administrative regulations relating to the health and cleanliness of places of business in which tattooing, body piercing or both are performed, procedures to prevent the spread of disease or infection during or relating to tattooing and body piercing procedures, and such other administrative regulations as may be necessary to protect public health.

(3) Minimum or uniform standards contained in the federal mandate. The ADA requires a public accommodation to take the steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently. The federal regulations regarding bloodborne pathogens applies to all occupational exposure to blood or other potentially infectious materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose any stricter requirements, or additional or different responsibilities or requirements.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amendment)

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

RELATES TO: KRS Chapter 13B, 209.020, Chapter 216B, 42 U.S.C. 1320 a-7l, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7l

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. 42 U.S.C. 1320a-7l directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. The Cabinet for Health and Family Services, Office of Inspector General, is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP initiative. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP as a voluntary program. The conditions set forth in this administrative regulation for voluntary KARES system participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions.

(1) "Applicant" means an individual who:

(a) Applies for employment with an employer identified in subsection (6) of this section; or

(b) Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

1. A misdemeanor offense related to:

a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);

b. Abuse, neglect, or exploitation of a child;

c. A sexual offense;

d. Assault occurring less than seven (7) years from the date of the criminal background check;

e. Stalking occurring less than seven (7) years from the date of the criminal background check;

f. Theft occurring less than seven (7) years from the date of the criminal background check, excluding KRS 514.040;

g. Fraud occurring less than seven (7) years from the date of the criminal background check;

h. Unlawfully possessing or trafficking in a legend drug or controlled substance occurring less than seven (7) years from the date of the criminal background check;

i. KRS 525.130, Cruelty to animals in the second degree – Exemptions – Offense involving equines;

j. KRS 525.135, Torture of dog or cat; or

k. Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;

2. A criminal offense against a victim who is a minor, as defined

in KRS 17.500(3);

3. A felony offense involving a child victim;

4. A felony offense under:

a. KRS Chapter 209, protection of adults;

b. KRS 217.182, Sale, distribution, administration, prescription, or possession of legend drugs – Penalty;

c. KRS Chapter 218A, controlled substances;

d. KRS 506.120, Engaging in organized crime;

e. KRS Chapter 434, offenses against property by fraud;

f. KRS Chapter 507, criminal homicide;

g. KRS Chapter 507A, fetal homicide;

h. KRS Chapter 508, assault and related offenses;

i. KRS Chapter 509, kidnapping and related offenses;

j. KRS Chapter 510, sexual offenses;

k. KRS Chapter 511, burglary and related offenses;

l. KRS Chapter 512, criminal damage to property;

m. KRS Chapter 513, arson and related offenses;

n. KRS Chapter 514, theft and related offenses, excluding KRS 514.040;

o. KRS Chapter 515, robbery;

p. KRS Chapter 516, forgery and related offenses;

q. KRS Chapter 517, business and commercial frauds;

r. KRS Chapter 520, escape and other offenses related to custody;

s. KRS Chapter 525, riot, disorderly conduct, and related offenses;

t. KRS Chapter 527, offenses relating to firearms and weapons;

u. KRS Chapter 529, prostitution offenses;

v. KRS Chapter 530, family offenses, excluding KRS 530.050;

w. KRS Chapter 531, pornography; or

x. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;

5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or

6. A crime described in 42 U.S.C. 1320a-7;

(b) A pending charge or an outstanding warrant for a criminal offense related to:

1. A sex crime as defined by KRS 17.500(8);

2. KRS Chapter 209, protection of adults;

3. KRS 218A.1412, Trafficking in controlled substance in first degree - Penalties;

4. KRS Chapter 507, Criminal homicide;

5. KRS Chapter 508, Assault and related offenses;

6. KRS Chapter 509, Kidnapping and related offenses;

7. KRS Chapter 510, Sexual offenses;

8. KRS Chapter 513, Arson and related offenses;

9. KRS Chapter 515, Robbery;

10. KRS Chapter 516, Forgery; or

11. KRS Chapter 531, Pornography;

(c) An out-of-state or federal charge that is pending or any outstanding warrant from another state or jurisdiction that is similar to an offense specified in subsection (b) of this section;

(d) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396f;

(e) Registration as a sex offender under federal law or under the law of any state; or

(f) Being listed on a registry as defined in subsection (10) of this section.

(5) "Employee" means an individual who:

(a)1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or

2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and

(b) Has access to the personal belongings or funds of a patient, resident, or client.

(6) "Employer" means:

(a) A long-term care facility as defined in KRS 216.510;

(b) A nursing pool as defined in subsection (9) of this section providing staff to a long-term care facility or provider;

(c) An adult day health care program as defined in KRS 216B.0441;

(d) An assisted living-community as defined in KRS 194A.700(5);

(e) A home health agency as defined in KRS 216.935;

(f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;

(g) A personal services agency as defined in KRS 216.710(10);

(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);

(i) A provider of home and community-based services authorized under KRS Chapter 205;

(j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section; or

(k) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.

(7) "KARES system" means the cabinet's secure, web-based application used to facilitate abuse registry and fingerprint-supported state and national criminal background checks for authorized users of the system.

(8) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following:

(a) Prospective employees of any employer identified in subsection (6)(a) through (j) of this section that participates voluntarily in the Kentucky National Background Check Program;

(b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:

1. Employment; or

2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and

(c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.

(9) "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.

(10) "Registry" means the:

(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;

(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);

(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;

(d) Caregiver misconduct registry required by KRS 209.032; and

(e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.

(11) "State" is defined by KRS 446.010(40).

(12) "Violent offender" is defined by KRS 439.3401(1).

Section 2. Applicability and Exceptions.

(1) This administrative regulation shall establish requirements for registry and criminal background checks of prospective employees seeking employment with a:

(a) State-owned or operated health facility licensed pursuant to KRS Chapter 216B; or

(b) Private long-term care employer that participates voluntarily in Kentucky's NBCP.

(2) This administrative regulation shall not apply to current employees of any employer that participates voluntarily in the Kentucky National Background Check program.

(3) A prospective employee shall not include:

(a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer;

(b) A physician, surgeon, dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietitian, therapist, phlebotomist, or any health care practitioner who is licensed to practice in Kentucky and is under contract with a participating employer in which a background check is required as a condition of professional licensure;

(c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;

(d) A student participating in an internship program; or

(e) A family member or friend visiting a patient or resident.

Section 3. Continuous Assessment.

(1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:

(a) Retains the fingerprints of an individual screened under the Kentucky NBCP:

1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and

(b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.

(2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

(1) Log on to the KARES portal; and

(2) Confirm acceptance of the terms and conditions for using the KARES system.

Section 5. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

(a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or Licensure;

(c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and

(d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1(10) of this administrative regulation; and

2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.

(2) If an applicant is cleared for hire after a check of the registries

and databases identified in subsection (1)(d) of this section, the participating entity shall submit payment via credit or debit card for the criminal background check.

(3)(a) A participating entity enrolled in the Kentucky NBCP shall pay a non-refundable fee not to exceed ~~thirty (30)~~~~[twenty-five (25)]~~ dollars to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.

(b) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check is not needed.

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet:

(a) Shall provide notice to the employer that the applicant is:

1. Eligible for hire; or

2. Not eligible for hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section 14 of this administrative regulation; and

(c) Shall, upon receipt of a written request from an applicant, send a copy if any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) An employer shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

Section 6. Provisional Employment.

(1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) calendar days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7. Individuals Ineligible to be Hired. An employer participating in the KARES program or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosures Form or Waiver Agreement and Statement Form required by Section 5(1) (b) and (c) of this administrative

regulation;

(2) The applicant is found on a registry as defined by Section 1(10) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5(3) of this administrative regulation; or

(5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible for hire based on a cabinet determination that the individual has been found to have a disqualifying offense.

Section 8. Notice of a Disqualifying Offense and Appeals.

(1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant or current employee who receives notice of a disqualifying offense may:

(a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or

(b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.

(4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.

(5) An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date of notice of the decision from an informal review or rehabilitation review.

(6)(a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.

(b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received by the Office of Ombudsman unless the applicant or employee agrees to a later date.

(c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.

(d) The administrative hearing shall be conducted pursuant to KRS 13B.080.

(e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.

(f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.

(7) If an applicant or current employee wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(8) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9. Termination of an Employee Upon Receipt of Notice of a Disqualifying Offense.

(1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than fifteen (15) calendar days after receipt of notice of the disqualifying offense; and

(b) Use the KARES system to provide electronic notification to the cabinet affirming the employee's dismissal within three (3) business days of termination.

(2)(a) If a provisional employee or current employee requests an informal review or a rehabilitation review pursuant to Section 8(3) of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and

2. Shall ensure that the employee is:

a. Subject to direct, on-site supervision; or

b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and

2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:

a. Remains subject to direct, on-site supervision; or

b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and

2. Shall terminate the employee as soon as practicable upon issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination.

Section 10. Rehabilitation Review.

(1)(a) An applicant or employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than seven

(7) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;

3. Registration as a sex offender under federal law or under the law of any state;

4. Any person who is a violent offender as defined by Section 1(12) of this administrative regulation; or

5. A pending charge or an outstanding warrant for a criminal offense described in Section 1(4)(b) of this administrative regulation.

(2)(a) An applicant or employee may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 8(1) of this administrative regulation regarding a determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-

imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:

(a) Is an employee of the Office of Inspector General; or

(b) Was responsible for determining that the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying offense.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General shall send the committee's determination on the rehabilitation waiver to the applicant.

(7) The decision of the committee shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative regulation.

(8) An employer shall not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 11. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13. Kentucky National Background Check Fund.

(1)(a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check fund to be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 5(3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check program.

Section 14. Termination of Participation. The cabinet shall terminate a voluntarily participating employer's participation in the Kentucky NBCEP for a period of no less than ninety (90) days if there has been substantial failure by the employer to comply with the provisions of this administrative regulation.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; and

(c) OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

(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.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for the Kentucky National Background Check Program (NBCP). Under Kentucky's NBCP, a secure, web-based application called the KARES system is used to facilitate abuse registry and fingerprint-supported state and FBI criminal background checks for authorized employers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for Kentucky's NBCP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 U.S.C. 1320a-71 directs the secretary of the United States Department of Health and Human Services (DHHS) to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. KRS 216.789, KRS 216.787, and KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities that provide direct services to the elderly or individuals with disabilities. This administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of the cabinet's comprehensive state and national background check program for voluntarily participating long-term care entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures and requirements for Kentucky's NBCP.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the maximum cost of the state and FBI fingerprint check fee by up to \$5 per check.

(b) The necessity of the amendment to this administrative regulation: In accordance with a state master agreement, IDEMIA

Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates by \$2 per fingerprint check and additional increases are expected. This amendment is necessary to establish a maximum fee that will offset IDEMIA's rate increase. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

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

amendment conforms to the content of the authorizing statutes by establishing procedures and requirements for Kentucky's NBCP.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing procedures and requirements to facilitate fingerprint-supported state and FBI background checks requested under Kentucky's NBCP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment impacts the 441 long-term care entities that voluntarily participate in Kentucky's NBCP. The total number of participating facilities and services by category are as follows: adult day health care centers (39), cabinet-operated facility (1), community mental health centers (8), home health agencies (79), hospice (14), intermediate care facilities for individuals with intellectual or developmental disabilities (5), Michelle P waiver providers (5), long-term care providers (196), personal services agencies (40), supports for community living waiver providers (54).

(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: KARES system users will be required to pay up to an additional \$5 per fingerprint check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Long-term care entities that use the KARES system to request background checks on prospective employees will incur an additional cost of \$2 per fingerprint check, up to \$5 per check if Idemia further increases their fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Comprehensive state and FBI fingerprint checks have a wide range of benefits that include reducing the rate of resident or patient abuse, neglect, and theft through more informed hiring practices and increasing applicant quality.

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

(a) Initially: There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's NBCP is funded by revenue generated from background check fees. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment seeks to increase the state and FBI fingerprint check fee by up to \$5 per check to offset recent and future rate increases by IDEMIA Identity & Security USA. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees necessary to sustain program operations.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all

individuals or entities regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts the Cabinet for Health and Family Services, Office of Inspector General, and long-term care entities that voluntarily participate in Kentucky's NBCP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 1320a-71, 42 U.S.C. 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate up to an additional \$5 per state and FBI fingerprint check to offset IDEMIA's recent rate increase and allow for a future IDEMIA increase. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate up to an additional \$5 per state and FBI fingerprint check to offset IDEMIA's recent rate increase and allow for a future IDEMIA increase.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Cabinet for Health and Family Services for implementation of this amendment during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for long-term care entities that voluntarily participate in Kentucky's NBCP during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for long-term care entities that voluntarily participate in Kentucky's NBCP during subsequent years.

(c) How much will it cost the regulated entities for the first year? Voluntarily participating long-term care entities will incur an additional cost of \$2 per fingerprint check currently, up to a \$5 increase if Idemia increases the amount they charge.

(d) How much will it cost the regulated entities for subsequent years? Voluntarily participating long-term care entities will incur an additional cost of \$2 per fingerprint check currently, but it could increase up to a total of \$5 per check if IDEMIA increases fees in the future. In accordance with Section 5(3) of this administrative regulation, the fee shall not exceed actual costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on long-term care entities that voluntarily participate in Kentucky's NBCP.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)**

922 KAR 1:520. Supplements to per diem rates.

RELATES TO: KRS 2.015, 199.011(4), (10), 200.503(3)[200.115(1)], 600.020(9), (30), [605.120(2)-]610.110(6), [620.020(1)-]620.140(1)(d)[-42 U.S.C.-672]

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(2)

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 implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, *Olmstead v. L.C. and E.W.*, 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a foster home to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions.

(1) ~~"Case permanency plan" is defined by KRS 620.020(1).~~

(2) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(2) "Child with a serious emotional disability" is defined by KRS 200.503(3).

(3) ~~"Crisis" means a factor or set of factors that:~~

~~(a) Jeopardizes a child's placement in a home; and~~

~~(b) Creates a risk for removal of the child from the home to a more restrictive setting, including institutionalization.~~

(4) "Exceptional needs" means the needs of a child:

(a) As specified in Section 2(2) or 4 of this administrative regulation; and

(b) Reimbursed in accordance with KRS 605.120(2).

(4) ~~(5)~~ "Extraordinary care" means services:

(a) Provided to a child with exceptional needs in the custody of the cabinet; and

(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10.

~~(5) ~~(6)~~ "Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the child and family.~~

~~(7)~~ "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and

600.020(30), if referring to a physical structure; or

(b) An individual approved as a foster parent by the cabinet pursuant to 922 KAR 1:310 or 922 KAR 1:350, if referring to an individual.

~~(6) [(8)]~~ "High-risk supplement" means a reimbursement to a foster home that is necessary to cover an additional expense associated with the provision of extraordinary care.

~~(7) [(9)]~~ "Parenting youth supplement" means a daily supplement to the per diem that is necessary to cover an additional expense associated with a youth who is placed with and has custody of their own child.

~~[(10)]~~ "Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a foster home.]

Section 2. High-risk supplement.

(1) To the extent funds are available, the cabinet shall reimburse a foster home for the extraordinary care provided to a child with exceptional needs.

(2) The cabinet shall consider a child eligible for a high-risk supplement if:

(a) 1. Community resources meet the child's needs; and

2. The child requires services consistent with Level ~~III~~ [IV or Level V] care established in 922 KAR 1:360, Section 4;

(b) The child is placed in a public child welfare agency ~~complex or care plus~~ foster home in accordance with 922 KAR 1:350;

(c) A child has a need for extraordinary care due to ~~[(a)]~~:

1. ~~Being a child with a serious emotional disability~~ [Transition]; ~~[(er)]~~

2. ~~Being designated as medically complex by cabinet staff, as established in 922 KAR 1:350, Section 4(1)(b); or~~

3. ~~Dual involvement with the Department of Juvenile Justice~~ [Crisis];

(d) A ~~consultation~~ [family team meeting] is held to:

1. ~~Assess the child and prospective foster home's need for additional support and services; and~~

2. Complete a "DPP-111B, High-Risk Supplement Assessment"; and

~~[(2)]~~ Include the following individuals:

a. Designated regional cabinet staff;

b. Family members, including the child or a sibling;

c. Family friends;

d. Community partners;

e. Foster parents; or

f. Other individuals requested by the family or cabinet staff; and]

(e) The foster home agrees to maintain a monthly log of the services provided to the child for the duration of the high-risk supplement.

(3) [If a child is eligible for the high-risk supplement:

~~(a) Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and~~

~~(b) The child's foster home shall complete monthly logs of the child's extraordinary care.~~

~~[(4)]~~ The high-risk supplement shall be:

(a) A standardized amount ~~[added to the per diem]~~ specified in contract between an approved foster home and the cabinet; and

(b) Provided to a foster home for a period of up to six (6) months if the requirements established in this section are met.

~~[(4)] [(5)]~~ Extensions to the high-risk supplement may be granted in six (6) month intervals if:

(a) The child is reassessed by the cabinet pursuant to Section 3 of this administrative regulation and continues to meet the eligibility requirements established in subsection (2) of this section; and

~~(b) A consultation is completed~~ [The family team meeting is held] prior to granting each extension in order to:

1. Review progress made ~~during~~ [in] the child's current case ~~planning conference~~ [permanency plan addendum], which shall include a review of the foster home's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, High-Risk Supplement Assessment".

~~[(5)] [(6)]~~ If a high-risk supplement extension is granted, the[

~~(a) The cabinet shall develop a new addendum to the child's case permanency plan that includes the specific services and their timeframes to be provided through the period of the extension granted; and~~

~~(b) The] foster home shall continue to complete monthly logs of the child's extraordinary care.~~

Section 3. Reassessment for High-Risk Supplement.

(1) If a foster home receives a high-risk supplement, the child shall be reassessed when the supplement expires to determine if the eligibility requirements established in Section 2 of this administrative regulation are met.

(2) If a child eligible for the high-risk supplement is relocated to another foster home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the child's prior foster home; and

(b) May redetermine the child to be eligible for the high-risk supplement if the requirements established in Section 2(2) of this administrative regulation are met.

Section 4. Parenting Youth Supplement.

(1) To the extent funds are available, the cabinet shall reimburse a foster home or approved provider pursuant to 922 KAR 1:300, 922 KAR 1:310, or 922 KAR 1:340 for the extraordinary care provided to a child who is a parenting youth.

(2) The cabinet shall consider a child eligible for a parenting youth supplement if:

(a) The child is placed in:

1. A cabinet-approved foster home as established by 922 KAR 1:350;

2. An independent living setting approved in accordance with 922 KAR 1:340;

3. A private child-placing agency foster home approved in accordance with 922 KAR 1:310; or

4. An approved private child-caring facility in accordance with 922 KAR 1:300.

(b) The child:

1. Is in the custody of the cabinet;

2. Has custody and control of their own child or children; and

3. Physically resides in the same location as the child or children; and

(c) A "DPP-116, Parenting Youth Supplement" is completed.

(3) A parenting youth supplement shall be:

(a) A standardized amount per child of the parenting youth added to the per diem of the parenting youth;

(b) Effective for the duration of the placement in which the youth in the custody of the cabinet and their child or children reside together; and

(c) Specified in the DPP-116.

(4) If a child deemed eligible for the parenting youth supplement is relocated to another foster home or provider established in subsection (2)(a) of this section, the cabinet:

(a) Shall cease reimbursement of the parenting youth supplement to the child's prior foster home or provider; and

(b) May redetermine the child to be eligible for the parenting youth supplement if the requirements of subsection (2) of this section are met.

Section 5. Service Appeals. A foster home or provider referenced in Section 4(1) of this administrative regulation may request an appeal in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-111B, High-Risk Supplement Assessment", 09/23/07/20; and

(b) "DPP-116, Parenting Youth Supplement", 11/20.

(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/dcbp/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and process for the provision of supplements to foster home per diems specifically for caring for high-risk and parenting youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a foster home or parenting youth may be reimbursed for extraordinary care in meeting the needs of children in out of home care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. This administrative regulation adds a supplement to foster care per diem for caring for youth in the cabinet's custody who require high-risk and parenting youth supplement to current per diem rates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through the establishment of extraordinary care provisions and existing high-risk and parenting youth supplement to current per diem rates.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the extraordinary care provisions for children in out of home care and streamlines the approval for a high-risk supplement for eligible children in out of home care in an effort to promote placement stability. This amendment is also necessary for consistency with recent amendments made to the levels of care established in 922 KAR 1:360. Material incorporated by reference, the DPP-111B, is also being amended in a consistent manner.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to be able to

provide a high-risk supplement to the per diem for the care of children with more complex needs in out of home care. This amendment is also necessary to reflect changes made in 922 KAR 1:360.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through the provision of reimbursement to foster homes that meet the extraordinary needs of children in out of home care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through the provision of reimbursement to foster homes that provide for the extraordinary needs of children in out of home care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During SFY2023, there were 291 youth receiving a special social services agreement; 57 youth receiving a parenting youth supplement; and 2 receiving a high risk supplement. Department for Community Based Services approved placement settings for youth in out of home care will be able to receive additional supports through this administrative regulation and proposed 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: A youth in need of extraordinary care provisions will have to meet criteria established in this administrative regulation to be eligible for the high-risk supplement. An approved provider will be required to submit the high-risk supplement assessment form in order to receive the additional reimbursement.

(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 new costs to the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth in need of extraordinary care provisions will experience the benefit of placement stability and appropriate service provision with the per diem supplements established in this administrative regulation. Financial arrangements with the foster care providers are comparable to past arrangements involving the same population with complex needs.

(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 is not projected to have a fiscal impact on the administrative body. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding includes federal Social Security Act Title IV-E funds for foster care maintenance 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: An increase in fees or funding is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is 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 Community Based Services, implements and is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.120(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? The administrative regulation will not generate any revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No fiscal impact is expected, and costs may be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Costs to the administrative body are comparable and absorbable within existing appropriations. There is a limited number of children and youth that this amendment will be applicable to, although it will provide great assistance towards obtaining placement stability for that small number of youths.

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? Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Some children and youth placed in foster homes may receive a higher per diem for their complex care and may provide some cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? This amendment does not include costs to regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This amendment does not include costs to regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, Chapter 209, 336.220, Chapter 506, 511, 515, 520, 525, 527, 529, 530, [620.050-620.120,]625.050-625.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.896(2) and 199.8982(1)(f) authorize, and 199.8994(6) requires the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(4) "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).

(5) "Family child-care home" is defined by KRS 199.894(5).

(6) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190 and 45 C.F.R. 98.43(b).

(7) "Rap back system" is defined by KRS 199.011(14).

(8) "Registered relative child care provider" means a child care provider who meets the requirements established in 922 KAR 2:180.

(9) "State and national criminal history records" means all background check components required by 45 C.F.R. 98.43(b).

(10) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member[~~age eighteen (18) or older~~], including:

(1) An owner, operator, or employee of a child care provider;

(2) A child-care center licensee or director;

(3) An adult household member of a Type II child-care center, family child-care home, or [provider]-registered relative child care provider[in accordance with 922 KAR 2:180];

(4) An employee who is present during the time a child is receiving care;

(5) Any person with supervisory or disciplinary control over a child in care; and

(6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement.

(1) A child care staff member shall complete the background checks required in accordance with this administrative regulation and be found to have no disqualifying offense prior to becoming a child care staff member.

(2) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5

of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).

(3) A child care provider shall request a background check in accordance with this administrative regulation once during each five (5) year period of employment for each current child care staff member.

(4) Prior to re-employment, a child care staff member shall repeat background checks required by this administrative regulation if they have been separated from employment with a child care provider within Kentucky for a period of one-hundred and eighty (180) consecutive days or more.

(5) A parent or guardian shall be required to consent to the background check of an individual who is under the age of eighteen (18).

Section 4. Procedures and Payments.

(1) To initiate the process ~~offer~~ obtaining a background check[checks] on a prospective child care staff member, the child care provider shall:

(a) Request the prospective child care staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the prospective child care staff member;

(b) Request the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information in order for the cabinet to perform[for] a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Sex Offender Public Web site~~[Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921]; and~~

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

(b) A child care provider enrolled in the Kentucky NBCP shall pay a fee not to exceed thirty (30)~~[twenty-five (25)]~~ dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) To the extent funds are available, the cabinet shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.

(4) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care staff member shall:

(a) Have no more than thirty (30) calendar days from the date of payment pursuant to subsections (2) and (3) of this section, to submit his or her fingerprints at an authorized collection site for NBCP to check state and national criminal history records; and

(b) Present his or her driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a check of the state and national criminal history records~~[the background checks]~~ in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Within forty-five (45) days, shall~~[Shall]~~ provide notice to the child care provider and prospective child care staff member in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or
2. Not eligible for hire if the prospective child care staff member

is found by the cabinet to have a disqualifying background check result in accordance with Section 6 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the ~~[child care provider or another]~~ entity provided on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from a prospective or current child care staff member~~[an applicant]~~, send a copy of a KSP~~[or FBI]~~ criminal history report to the prospective or current child care staff member by certified mail, restricted delivery service. The prospective or current child care staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) A child care provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

(7) A prospective or current child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(8)(a) If the NBCP portal is not operational, the cabinet may request a federal waiver that would allow a prospective staff member to undergo a:

1. Child abuse and neglect central registry check pursuant to 922 KAR 1:470;

2. Criminal records check conducted by the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

3. National Sex Offender Public Website~~[Crime Information Center's National Sex Offender Registry]~~ check in accordance with 34 U.S.C. 20921; and

4. Sex Offender Registry check in accordance with KRS 17.500 through 17.580.

(b) A background check completed through the NBCP portal shall be required as soon as operational.

Section 5. Checks of Other States.

(1) ~~[If in accordance with 45 C.F.R. 98.43(b)(3);]~~ a prospective child care staff member ~~[who]~~ resides in or has resided in another state within the last five (5) years, the cabinet, in accordance with 45 C.F.R. 94.43 (b)(3), shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures~~[- with a courtesy notice to the cabinet];~~

1. A state~~[An in-state]~~ criminal records check by means~~[- Means]~~ of fingerprints for the state of residence unless the state participates in the FBI's National Fingerprint File Program; ~~[or~~

~~b. Any means accepted by a state of prior residency;]~~

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection be provided to the cabinet~~[Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, or securely send results to CHFSDDCNBCP@ky.gov].~~

(2) ~~[If the prospective child care staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, a prospective child care staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.~~

~~(3)]~~ In accordance with KRS 336.220, an employer~~[a child care provider]~~ shall pay any fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective or current child care staff member.

~~(3)]~~~~(4)]~~ If another state fails to respond to a check submitted in accordance with subsection (1) of this section within forty-five (45)~~[thirty (30)]~~ calendar days from the date of the background check request~~[as verified by the child care staff member]~~, the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider and staff member in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) of this administrative regulation if:

1. Another state provides requested background check results

at a later date; and

2. A disqualifying background check result is identified.

(4) ~~[(5)]~~ A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by [a]:

(a) ~~A parent~~ Parent or legal guardian in accordance with KRS 199.466; or

(b) ~~Another state's child care licensing agency~~ Child care staff member in another state.

Section 6. Disqualifying Background Check Results.

(1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired as a child care staff member or be an adult household member of a registered relative child care provider, family child-care home, or Type II child-care center ~~or otherwise serve as a child care staff member~~ if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);

2. Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to:

a. A drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. A sex or violent crime pursuant to KRS 17.165;

c. A felony offense under:

(i) KRS Chapter 209, protection of adults;

(ii) KRS Chapter 506, inchoate offenses;

(iii) KRS Chapter 511, burglary and related offenses;

(iv) KRS Chapter 515, robbery;

(v) KRS Chapter 520, escape and other offense related to custody;

(vi) KRS Chapter 525, riot, disorderly conduct, and related offense;

(vii) KRS Chapter 527, offenses relating to firearms and weapons;

(viii) KRS Chapter 529, prostitution offenses; or

(ix) KRS Chapter 530, family offenses, excluding KRS 530.050; or

d. A misdemeanor offense under:

(i) KRS 525.130, cruelty to animals in the second degree - exemptions - offense involving equines; or

(ii) KRS 525.135, torture of dog or cat;

3. Is listed on:

a. The central registry established in accordance with 922 KAR 1:470; or

b. Another state's state-based child abuse and neglect registry or database;

4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

5. Has an open warrant for a disqualifying offense established in this paragraph; or

6. Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as an owner, [a] child-care provider's [applicant,] licensee, administrative staff, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered relative child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals.

(1) ~~If applicable, the~~ The cabinet shall notify each prospective or current child care staff member of:

~~(a) A~~ determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation; and

(b) The applicant or employee's rights to:

1. Challenge the accuracy of the cabinet's determination;

2. Request an informal review;

3. Request a rehabilitative review; and

4. Request an administrative hearing.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 9 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current child care staff member and child care provider.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current child care staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result.

(1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a) 1. Terminate the child care staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; or

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)(a) If a prospective or current child care staff member or adult household member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

1. May retain the child care staff member pending resolution of the informal review or rehabilitative review; and
2. Shall ensure that the child care staff member:
 - a. Is subject to direct, onsite supervision; or
 - b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A child care provider shall terminate the child care staff member or relocate the adult household member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and
2. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a child care staff member or adult household member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care staff member:
 - a. Remains subject to direct, onsite supervision; or
 - b. Does not have duties or proximity that involves one-on-one contact with a child in care; and
2. Shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

(d) Using the NBCP, the child care provider shall provide electronic notification to the cabinet affirming the individual's dismissal or relocation within three (3) business days of the termination or relocation.

Section 9. Rehabilitative Review.

(1)(a) A prospective or current child care staff member or adult household member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying offense established in 45 C.F.R. 98.43(c);
2. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;
- 3.[2.] Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;
- 4.[3.] Registration as a sex offender under federal law or under the law of any state;
- 5.[4.] A sex or violent crime as defined by KRS 17.165; or
- 6.[5.] A child abuse and neglect substantiated finding that:
 - a. Occurred less than seven (7) years prior to the date of the registry check; or
 - b. Involved:
 - (i) Sex abuse or sex exploitation of a child;
 - (ii) A child fatality related to abuse or neglect;
 - (iii) A near fatality of a child related to abuse or neglect; or
 - (iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)(a) A prospective or current child care staff member or adult household member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 4(5) or 7(4) of this administrative regulation regarding a

determination of a disqualifying background check result.

(b) If a prospective or current child care staff member requests a rehabilitative review, the child care staff member:

1. May be retained by the child care provider pending the rehabilitative review; and
 2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.
- (3) The request for a rehabilitative review shall include:
- (a) A written explanation of each disqualifying background check result, including:
 1. A description of the events related to the disqualifying background check result;
 2. The number of years since the occurrence of the disqualifying background check result;
 3. The age of the individual at the time of the disqualifying background check result; and
 4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable;

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom were responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the prospective or current child care staff member or adult household member[applicant] has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment.

(1) A child care provider shall maintain the employment or residential status of each child care staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.

(2) The cabinet shall inspect a child care provider to verify conformity with this administrative regulation.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", 01/2022; and
- (b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", 01/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2023

FILED WITH LRC: September 7, 2023 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 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 November 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check requirements for child care staff members, reporting requirements, and appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child care staff members' background checks, reporting requirements, and appeals. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858. KRS 199.896(2) and 199.8982(1)(f) authorize, and KRS 199.8994(6) requires, the cabinet to promulgate administrative regulations pertaining to standards of a child care provider, including criminal convictions that impact the safety and security of children in care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of child care staff member background checks, reporting requirements, and appeals.

(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 addresses non-compliances that were identified during the Department for Community Based Services (DCBS) Division of Child Care federal monitoring visit in 2022. Non-compliances addressed within this administrative regulation include Child Care Development Fund (CCDF) Rule Provisions §98.43, plan

items 5.5.2, 5.5.3, 5.5.5, and 5.5.8. This includes clarifying the need for child care staff members who are minors to complete background check components. The amendment also clarifies the federal requirement to repeat fingerprint-based background checks every five (5) years and clarifies that the cabinet (not a provider) is responsible for obtaining information needed for out of state background checks if the other state doesn't participate in the FBI National Fingerprint File Program. The amendment also clarifies that background check notices shall be sent to the child care staff member and the child care provider. The amendment to this administrative regulation also increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars. The cabinet is currently using federal child care funds to cover this cost for providers.

(b) The necessity of the amendment to this administrative regulation: The amendments are to ensure the DCBS Division of Child Care is addressing the non-compliances identified during the federal monitoring visit in 2022. The amendments ensure the cabinet is meeting all requirements of CCDF rules and ensures the health and safety of children in care. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check. This amendment is necessary to offset the cost of IDEMIA's rate increase being passed on to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858. KRS 199.896(2) and 199.8982(1)(f) authorize, and 199.8994(6) requires the cabinet to promulgate administrative regulations pertaining to standards of a child care provider, including criminal convictions that impact the safety and security of children in care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures compliance with federal and state law and the safety and security of children in care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 14, 2023, there were 1,804 licensed child care providers, 207 certified providers, and 46 registered providers whose staff have undergone national fingerprint-based background checks. Since implementing the National Background Check Program (NBCP) for child care staff in 2018, over 70,000 background checks have been conducted in this manner.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child care providers will need to continue to ensure they are employing child care staff that have completed the required background checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): To the extent possible, the department has and will continue to use its resources to absorb or offset costs for child care providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Child care providers have access to comprehensive state and national background checks for potential and current child care staff members (including child care staff members who are minors). The utilization of the Kentucky National Background Check Program meets federal recommendations.

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

(a) Initially: The DCBS Division of Child Care has secured federal funds to pay for these background checks for child care staff.

(b) On a continuing basis: The DCBS Division of Child Care will absorb or offset costs associated with implementation of the federal

mandate within its existing appropriations, including federal award, to the extent possible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds will support the ongoing implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees is necessary and is included in this amendment. The company the Kentucky State Police contract with to complete national fingerprint-based background checks, IDEMIA Identity & Security USA, has increased their fee per background check for the first time in five (5) years. This increase is included in this amendment although the DCBS Division of Child Care is utilizing federal funds to cover this cost for child care providers.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does directly increase a fee. The amendment increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars (established in 2018) to up to thirty (30) dollars. The cabinet is currently using federal child care funds to cover this cost for providers. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check. This amendment is necessary to offset the cost of IDEMIA's rate increase being passed on to the cabinet.

(9) TIERING: Is tiering applied? Tiering is not applied. Compliance with this administrative regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q.

(2) State compliance standards. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6).

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Quasi-governmental agencies, local governments, and school districts that operate a licensed child-care center will be impacted by this administrative regulation by being required to meet the standards contained herein.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6), 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue. Fees passed along to regulated entities (and covered by the cabinet for at least the time being) are not allowed to exceed the actual cost of the check. This increase is necessary due to a recent IDEMIA rate increase.

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

(c) How much will it cost to administer this program for the first year? The program is already in operation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates being able to absorb or offset costs within its existing state and federal awards.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings.

(c) How much will it cost the regulated entities for the first year? The cabinet is using federal funds to cover this rate increase to providers.

(d) How much will it cost the regulated entities for subsequent years? The cabinet is using federal funds to cover this rate increase to providers.

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 regulatory amendment will not have a major economic impact on child care providers that participate in the National Background Check Program. The cost of conducting a national fingerprint-based background check has increased for the first time in five (5) years, but the cabinet continues to cover this cost for providers through the utilization of federal funds.

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](#).

**OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(New Administrative Regulation)**

17 KAR 6:020. Kentucky Women Veterans Program and coordinating committee. Administrative procedures.

RELATES TO: KRS 40.310, 40.560, 40.600

STATUTORY AUTHORITY: KRS 40.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.600 authorizes the Kentucky Department of Veterans Affairs to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.600 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures. This administrative regulation also establishes a coordinating committee to make recommendations for fund expenditures and outlines the administrative procedures of the coordinating committee.

Section 1. Definitions.

- (1) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.
- (2) "Coordinating Committee" means the Women Veterans Program Coordinating Committee.
- (3) "Fund" means the Kentucky Women Veterans Program Fund.
- (4) "Woman Veteran" means a woman who served in the United States Armed Forces or in forces incorporated as part of the United States Armed Forces, and who was discharged under other than dishonorable conditions.

Section 2. Expenditures and Fundraising.

- (1) In accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended in support of the Women Veterans Program's activities or events that directly benefit women veterans, including the following activities or events:
 - (a) Educational sessions or training seminars focused on eligibility requirements for women veterans seeking federal and state veterans' benefits and services;
 - (b) Research projects focused on collecting and retaining demographic or service-connected disability data for Kentucky's women veterans;
 - (c) Dissemination of benefit information for women veterans through circulars, brochures, social media, and other media outlets;
 - (d) Annual meetings or conferences focused on engagement of Kentucky's women veterans and discussions of issues specific to women veterans;
 - (e) Job fairs, job placement services, other similar programs, or a combination of these focused on employing women veterans;
 - (f) Therapeutic opportunities focused on improving the mental and emotional wellbeing of Kentucky's women veterans;
 - (g) Entrepreneurial opportunities for women veterans seeking to establish or expand female veteran-owned businesses;
 - (h) Programs, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's women veterans.
 - (i) Other services designed to make gaining access to federal and state benefits and services more convenient, efficient, or feasible for Kentucky's women veterans.
 - (j) Costs associated with the above, such as transportation, meals, lodging, and salaries.

- (2) Fundraising. If fundraising on behalf of the Women Veterans Program, the Kentucky Department of Veterans Affairs may accept a gift, donation, or grant from an individual, a corporation, or a government entity.

Section 3. Coordinating Committee for the Women Veterans Program.

- (1) The committee shall consist of ten (10) members, including:
 - (a) The commissioner of the Kentucky Department of Veterans Affairs;
 - (b) The women veterans program coordinator of the Kentucky Department of Veterans Affairs;
 - (c) Two (2) members from state government:
 1. A Senator appointed by the President of the Kentucky Senate;
 2. A Representative appointed by the Speaker of the Kentucky House of Representatives.
 - (d) Two (2) members from public agencies that provide grants, benefits, or services to women veterans.
 - (e) Four (4) members from private organizations that provide grants, benefits, or service to women veterans.
- (2) The commissioner of the Kentucky Department of Veterans Affairs shall appoint the public agencies and private organizations represented on the committee.
 - (a) A public agency and private organization specified in subsection (1)(d) and (e) of this section shall recommend two (2) members of the agency or organization to serve on to the committee.
 - (b) The commissioner of the Kentucky Department of Veterans Affairs shall appoint one (1) member from each agency and each organization from the names submitted by the agencies and organizations.
 - (c) Where possible, at least seven (7) members of the coordinating committee shall be women veterans.
- (3) Terms of members. Except in cases of retirement, resignation, or other inability or unwillingness to serve, the initial appointments to the committee shall be as established in paragraphs (a) and (b) of this subsection.
 - (a) A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of two (2) years.
 - (b) A member appointed pursuant to subsection (1)(d) and (e) of this section shall serve for a period of three (3) years.
- (4) The committee shall:
 - (a) Meet at the call of the commissioner of Kentucky Department of Veterans Affairs, at least once per quarter.
 - (b) Make recommendations for fiscally responsible uses of funds donated, gifted, or designated to the Women Veterans Program, including:
 1. Propose, investigate, and approve activities that support Kentucky's women veterans;
 2. Establish guidelines for approved activities, including funding parameters.
 - (c) Prepare meeting minutes that summarize each meeting, including recommendations made by the committee;
 - (d) Prepare an annual report that summarizes recommendations made by the committee and financial activities undertaken on behalf of Kentucky's women veterans;
 - (e) Submit an annual report by July 20th of each year to be included in the Kentucky Department of Veterans Affairs Annual Report.
- (5) The commissioner shall assign duties as appropriate to the Kentucky Department of Veterans Affairs' staff or members of the coordinating committee to assist with administration of the committee.

Section 4. Coordinating Committee Procedures. Coordinating committee procedures shall be in accordance with the approved by-laws of the Women Veterans Coordinating Committee.

VOLUME 50, NUMBER– OCTOBER 1, 2023

This is to certify that the Executive Director of the Office of Kentucky Veteran Services and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

SILAS SESSION, Executive Director
WHITNEY ALLEN, Commissioner
TAMARA REID-MCINTOSH, Executive Director

APPROVED BY AGENCY: September 11, 2023

FILED WITH LRC: September 13, 2023 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, November 28, 2023, at 11:00 a.m. Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 Thursday, November 30, 2023, at 11:59 p.m. 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: Juan Renaud, Deputy Commissioner, Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5721; fax (502) 564.9240; email juan.renaud@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 40.600 charges the Kentucky Department of Veterans Affairs with administering a program to service the approximately seven percent (7%) or 24,000 women veterans in the Commonwealth. Specifically, KRS 40.600 mandates that KDVA conduct outreach, advocacy, and education for Kentucky's women veterans.

(b) The necessity of this administrative regulation: KRS 40.600 authorizes the Women Veterans Program to receive funding from not only the General Assembly, but also other sources such as grants and donations. Proposed regulation 17 KAR 06:020 will afford the Women Veterans Program the administrative bandwidth to carry out the mandates outlined in KRS 40.600.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Proposed regulation 17 KAR 06:020 conforms to the content of KRS 40.600 by focusing on conducting outreach, advocacy, and education for Kentucky's women veterans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Proposed regulation 17 KAR 06:020 will assist in the effective administration of KRS 40.600 by outlining the Coordinating Committee's administrative functions; detailing the means in which funds can be expended; and affording a mechanism to determine how many of Kentucky's women veterans are reached by the initiatives of the Women Veterans Program.

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

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

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

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

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

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

organizations, or state and local governments affected by this administrative regulation: There are approximately 275,000 veterans in the Commonwealth. Women veterans account for approximately seven percent (7%) or 24,000 of Kentucky's veterans. Women veterans affected by the proposed administrative change include:

(a) those (including their legal representatives) who are seeking compensation and benefits from the U.S. Department of Veterans Affairs or from the Commonwealth of Kentucky.

(b) any individual or other organization (such as a veteran service organization (VSO)) inquiring about benefits and services to Kentucky's women veterans.

(c) public and private organizations seeking to provide benefits or services to Kentucky's women veterans.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will not be required to perform compliance actions for this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Donors will be required to ensure their donations are properly addressed for deposit in the Women Veterans Fund. There will be no costs to the benefiting entities derived from compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's women veterans will benefit from proposed regulation 17 KAR 06:020 by receiving more opportunities for education, advocacy, and outreach as it relates to claims, benefits, and services available to Kentucky's women veterans.

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

(a) Initially: There will be no costs to the administrative body either initially or on a continuing basis.

(b) On a continuing basis: There will be no costs to the administrative body either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement funding is contained as part of the Women Veterans Program KDVA budget.

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

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

(9) TIERING: Is tiering applied? Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been applied.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.540 and KRS 40.600.

(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? Approximately \$5,000.

(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? Not Applicable.

(c) How much will it cost to administer this program for the first year? The only costs for the first year are the costs of salaries to fill the positions necessary to run the Program.

(d) How much will it cost to administer this program for subsequent years? The only costs for subsequent years are the costs of salaries to fill the positions necessary to run the Program.

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

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Approximately \$5,000.

Other Explanation: Although the Program's employee's salaries are funded by General Funds, KRS 40.600 (6)(a) and (6)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Specific dollar estimates cannot be determined.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Specific dollar estimates cannot be determined.

(c) How much will it cost the regulated entities for the first year? Not Applicable.

(d) How much will it cost the regulated entities for subsequent years? Not Applicable.

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

Cost Savings (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: Although the Program's employees' salaries are funded by General Funds, KRS 40.600 (6)(a) and (6)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

(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. [KRS13A.010(13)] Not Applicable.

**OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(New Administrative Regulation)**

17 KAR 6:030. Kentucky Wounded or Disabled Veterans Program. Administrative procedures.

RELATES TO: KRS 40.310, 40.560, 40.350

STATUTORY AUTHORITY: KRS 40.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.350 authorizes the Kentucky Department of Veterans Affairs to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.350 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures and establish a Program Coordinator to facilitate the administration of the Wounded or Disabled Veterans Program.

Section 1. Definitions.

(1) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

(2) "Coordinator" means the Coordinator of the Wounded or Disabled Veterans Program.

(3) "Disabled Veteran" means a veteran who was deemed disabled while serving in the United States Armed Forces, under conditions other than dishonorable, or was deemed disabled by the United States Department of Veterans Affairs after being discharged, under conditions other than dishonorable.

(4) "Fund" means the Wounded or Disabled Veterans Program Fund.

(5) "Wounded Veteran" means a veteran who was wounded while serving in the United States Armed Forces, who was discharged under conditions other than dishonorable.

Section 2. Expenditures and Fundraising.

(1) In accordance with this section and sections (2)-(4), money appropriated from the fund shall be expended in support of the Wounded or Disabled Veterans Program's initiatives that are focused on easing the transition from active service for wounded or disabled veterans or ensuring that wounded or disabled veterans receive the federal, state, and private benefits to which they are entitled.

(2) Wounded or Disabled Veterans Program's initiatives shall focus on at least one (1) of the following:

(a) Performing outreach to improve wounded or disabled veterans' awareness of eligibility for federal, state, and private wounded or disabled veterans' services and benefits;

(b) Supporting legislation and policies on the local, state, and national levels to advocate and bringing public awareness to wounded or disabled issues;

(c) Collaborating with federal, state, and private agencies that provide services to wounded or disabled veterans, including entering into data-sharing agreements with the United States Department of Veterans Affairs and the Department of Defense to obtain timely information with regard to the addresses and medical statuses of Kentucky's wounded or disabled veterans;

(d) Assessing the needs of wounded or disabled veterans with respect to benefits and services;

(e) Reviewing programs, research projects, and other initiatives that are designed to address or meet the needs of Kentucky's wounded or disabled veterans;

(f) Incorporating wounded or disabled veterans' issues in strategic planning concerning benefits and services;

(g) Monitoring and researching issues relating to wounded or disabled veterans and disseminating information and opportunities throughout the Program's network;

(h) Providing guidance and direction to wounded or disabled

veterans applying for grants, benefits, or services via conferences, seminars, and training workshops with federal, state, and private agencies;

(i) Promoting events and activities that recognize and honor wounded or disabled veterans;

(j) Providing facilities, as appropriate, in support of the Program through grants and other sources of funding.

(3) Terms of Data-Sharing. With the consent of a wounded or disabled veteran, the Program's coordinator, or his or her designee, may obtain personal information concerning wounded or disabled veterans for the sole purpose of implementing the Program. Under the provisions of KRS 61.878, the information shall not be subject to public disclosure.

(4) Fundraising. If fundraising on behalf of the Wounded or Disabled Veterans Program, the Kentucky Department of Veterans Affairs may accept a gift, donation, or grant from an individual, a corporation, or a government entity.

This is to certify that the Executive Director of the Office of Kentucky Veteran Services and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

SILAS SESSION, Executive Director

WHITNEY ALLEN, Commissioner

TAMARA REID-MCINTOSH, Executive Director

APPROVED BY AGENCY: September 11, 2023

FILED WITH LRC: September 13, 2023 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, November 28, 2023, at 1:00 p.m. Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 Thursday, November 30, 2023, at 11:59 p.m. 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: Juan Renaud, Deputy Commissioner, Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5721; fax (502) 564.9240; email juan.renaud@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 40.350 charges the Kentucky Department of Veterans Affairs with administering a program to service the approximately twenty-seven percent (27%) or 75,000 veterans are receiving Compensation or Pension Disability Benefits from the U.S. Department of Veterans Affairs. Specifically, KRS 40.350 mandates that KDVA conduct outreach, advocacy, and education for Kentucky's disabled or wounded veterans.

(b) The necessity of this administrative regulation: KRS 40.350 authorizes the Disabled or Wounded Veterans Program to receive funding from not only the General Assembly, but also other sources such as grants and donations. Proposed regulation 17 KAR 06:030 will afford this Veterans Program the administrative bandwidth to carry out the mandates outlined in KRS 40.350.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Proposed regulation 17 KAR 06:030 conforms to the content of KRS 40.350 by focusing on conducting

outreach, advocacy, and education for Kentucky's wounded and disabled veterans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Proposed regulation 17 KAR 06:030 will assist in the effective administration of KRS 40.350 by detailing the means in which funds can be expended and affording a mechanism to determine how many of Kentucky's wounded or disabled veterans are reached by the initiatives focused on their specific circumstances.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 275,000 veterans in the Commonwealth. Wounded or disabled veterans account for approximately twenty-seven percent (27%) or 75,000 of Kentucky's veterans. Veterans affected by the proposed administrative change include:

(a) veterans (including their legal representatives) who are seeking compensation and benefits from the U.S. Department of Veterans Affairs or from the Commonwealth of Kentucky.

(b) any individual or other organization (such as a veteran service organization (VSO)) inquiring about benefits and services to Kentucky's wounded or disabled veterans.

(c) public and private organizations seeking to provide benefits or services to Kentucky's wounded or disabled veterans.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will not be required to perform compliance actions for this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Donors will be required to ensure their donations are properly addressed for deposit in the Wounded or Disabled Veterans Fund. There will be no costs to the benefiting entities derived from compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's wounded or disabled veterans will benefit from proposed regulation 17 KAR 06:030 by receiving more opportunities for education, advocacy, and outreach as it relates to claims, benefits, and services available to Kentucky's wounded or disabled veterans.

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

(a) Initially: There will be no costs to the administrative body either initially or on a continuing basis.

(b) On a continuing basis: There will be no costs to the administrative body either initially or on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement funding is contained as part of KDVA's Wounded or Disabled Veterans Program budget.

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

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

(9) TIERING: Is tiering applied? Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate

impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been applied.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. State statutes that require or authorize the action taken by the administrative regulation are KRS 40.540 and KRS 40.350.

(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? Approximately \$5,000.

(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? Not Applicable.

(c) How much will it cost to administer this program for the first year? The only costs for the first year are the costs of salaries to fill the positions necessary to run the Program.

(d) How much will it cost to administer this program for subsequent years? The only costs for subsequent years are the costs of salaries to fill the positions necessary to run the Program.

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

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Approximately \$5,000.

Other Explanation: Although the Program's employee's salaries are funded by General Funds, KRS 40.350 (7)(a) and (7)(b) authorize the Program to "receive and expend moneys that may be appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote wounded or disabled veterans activities, as the funds are received from General and Other Funds.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Specific dollar estimates cannot be determined.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Specific dollar estimates cannot be determined.

(c) How much will it cost the regulated entities for the first year? Not Applicable.

(d) How much will it cost the regulated entities for subsequent years? Not Applicable.

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

Cost Savings (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: Although the Program's employees' salaries are funded by General Funds, KRS 40.350 (7)(a) and (7)(b) authorize the Program to "receive and expend moneys that may be

appropriated by the General Assembly," as well as "other moneys received from any other source, including donations and grants." Authorization to receive other moneys results is speculative and makes it difficult to provide specific dollar amounts. The Program will promote women veterans activities, as the funds are received from General and Other Funds.

(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. [KRS13A.010(13)] Not Applicable.

BOARDS AND COMMISSIONS Board of Optometric Examiners (New Administrative Regulation)

201 KAR 5:005. Fees, fines, and forms.

RELATES TO: KRS 218A.205(3)(g), 320.220, 320.250, 320.270
STATUTORY AUTHORITY: KRS 218A.205(3)(g), 320.240(7), 320.270(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky Board of Optometric Examiners. KRS 320.250 establishes criteria for an applicant to apply for a license. KRS 320.270 grants the board the discretion to admit to practice in Kentucky persons licensed to practice optometry in other states. KRS 218A.205(3)(g) requires fingerprint-supported criminal record checks and queries to the National Practitioner Data Bank on applicants. This administrative regulation prescribes the procedures to be followed in making application to the board for a license, renewal of that license, and fines those who fail to comply with continuing education requirements.

Section 1. Initial Application Fee. A non-refundable initial application and license fee shall be \$500 per year.

Section 2. Application for License by Endorsement Fee. A non-refundable application and license shall be \$700 per year.

Section 3. Initial License Fee. A non-refundable initial license fee shall be pro-rated from \$250 for the remainder of months left in the license year.

Section 4. Renewal License Fee. A non-refundable renewal fee shall be \$250 per year.

Section 5. Late Renewal License Fee. A non-refundable late renewal fee shall be \$100, in addition to the Renewal License Fee outlined in Section 4 of this administrative regulation.

Section 6. Duplicate License Fee. A non-refundable fee for a duplicate license renewal certificate shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$250 for each year, or any portion of a year that the license was not renewed.

Section 8. Reinstatement Administrative Processing Fee. A reinstatement administrative processing fee shall be \$300, in addition to the Reinstatement Fee outlined in Section 7 of this administrative regulation.

Section 9. Name Change Fee. A non-refundable fee to process a name change shall be twenty (25) dollars.

Section 10. Insufficient Funds Fee. A fee for returned check or denied online banking (ACH) payment shall be fifty (50) dollars.

Section 11. Continuing Education Non-compliance Fine. A fine

of \$500 shall be assessed against any licensee who fails to comply with the Continuing Education requirements for Kentucky Optometrists as outlined in KRS 320.280 and 201 KAR 5:030. The initial assessment of this fine against a licensee shall not result in disciplinary action and shall not be reported to the National Practitioners Databank (NPDB). However, any subsequent violations of this provision may be reported to the NPDB at the discretion of the board. In such instances, the action will be appealable pursuant to KRS 320.321, 201 KAR 5:070, and KRS Chapter 13B.

Section 12. License Verification List. A fee for a licensee verification list shall be \$100.

Section 13. Individual License Verification. A fee for an individual licensee written verification shall be twenty-five (25) dollars.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference from www.optometry.ky.gov:

(a) "Application for License to Practice Optometry", March 2023; and

(b) "Application for License by Endorsement to Practice Optometry", March 2023.

(c) "Application for Expanded Therapeutic Procedures Course", March 2023;

(d) "Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(e) "Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(f) "Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(g) "Preceptor Approval Form", March 2023;

(h) "Preceptor Evaluation of Expanded Therapeutic Laser Procedure", March 2023; and

(i) "Application to Utilize Expanded Therapeutic Laser Procedure(s)", March 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, telephone (859) 246-2744, Monday through Friday, 9 a.m. to 4:30 p.m. or on our Web site www.optometry.ky.gov

WILLIAM REYNOLDS, President

APPROVED BY AGENCY: September 8, 2023

FILED WITH LRC: September 14, 2023 at 2:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 3:00 p.m. at the Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on November 14, 2023, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christi LeMay, Executive Director, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504; phone (859) 246-2744; fax (859) 246-2746; email christi.lemay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christi LeMay

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes necessary Fees for administration of the duties of the Office of the Kentucky Board of Optometric Examiners, establishes a fine for non-compliance with the Continuing Education requirements, and acts as a repository for the Applications for licensure utilized by the public to make application for licensure and those utilized by existing licensees to modify their credentials as authorized by existing statutory law.

(b) The necessity of this administrative regulation: KRS 320.240 and KRS 320.295 require the Board to promulgate administrative regulations to establish standards for the appropriate administration of Optometric practice in Kentucky. This regulation acts to put the public on notice related to the fees, fines, and forms utilized to interact with this agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes the fee, fines, and forms utilized in the regulation of Optometry Services in Kentucky in conjunction with statutory authority and standards contained in KRS Chapter 320, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation places stakeholders on notice related to appropriate fees for licensure, fines for non-compliance with the continuing education rule outlined in KRS 320.280, and the forms required to interact with the agency for the appropriate administration and regulation of Optometry Services in Kentucky as authorized by existing statutory law.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Doctors of Optometry, and potential applicants for licensure totaling approximately 1,000 will be affected as will the Agency itself as it enforces these provisions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky Doctors of Optometry will be affected by this administrative regulation, as will the agency as it seeks to enforce these provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no direct cost associated with these provisions as they simply establish the standards for appropriate regulation of Optometry Services, however certain fees will now be required for administration of the reinstatement of the license, and non-compliance with the continuing education rules for Kentucky Licensed Doctors of Optometry.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency will have more direct means of monitoring professional practice.

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

(a) Initially: This will not cost the agency any money to implement.

(b) On a continuing basis: This will not cost the agency nor stakeholders any money to implement.

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

Agency Restricted Funds from Licensing fees and fines. The agency receives no unrestricted state or federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, this administrative regulation directly creates new fees, as well as a routine fine for violations of the licensing laws. Additionally, it increases some fees to promote timely renewal of licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation directly creates new fees, as well as a routine fine for violations of the licensing laws. Additionally, it increases some fees to promote timely renewal of licenses.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Optometric Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 320.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Some revenue may be generated in order to offset administrative costs of tracking non-compliance with continuing education rules. No regular fee revenue will be generated, unless additional fees are levied as a result late license renewal, or license reinstatement.

(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? Approx. \$5,000 per year. This based on approx. 100 Doctors of Optometry renewing within the grace/late period with a late renewal fee of \$100.

(c) How much will it cost to administer this program for the first year? No costs to administer the first year directly.

(d) How much will it cost to administer this program for subsequent years? No costs to administer directly.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The regulation establishes necessary Fees for administration of the duties of the Office of the Kentucky Board of Optometric Examiners, establishes a fine for non-compliance with the Continuing Education requirements, and acts as a repository for the Applications for licensure utilized by the public to make application for licensure and those utilized by existing licensees to modify their credentials as authorized by existing statutory law. It may generate revenue due to non-compliance with existing laws, however there are no cost-savings associated with this regulation.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. There will be no effect on the regulated entities assuming they renew their license during the renewal period, and comply with the continuing education requirements of KRS 320.280, and 201 KAR 5:030.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no anticipated cost savings or cost increase for the regulated entities as these rules unless licensees fail to comply with existing laws related to maintaining a license.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no anticipated cost savings or cost increase for the regulated entities

as these rules have generally been effect for years previously.

(c) How much will it cost the regulated entities for the first year? There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years? There are no explicit new costs nor any indirect costs associated with this filing.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: This filing reinitiates the KBOE's Expired Regulations for Advertising, Expungement of Minor Violations, and Unprofessional Conduct which had previously been effect largely in this form. Additionally, it consolidates some other existing regulations. As such, there is no anticipated change in costs to regulated entities, who are optometrists and therefore no applicable dollar estimates to provide.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, that definition does not apply here for the reasons given above.

BOARDS AND COMMISSIONS

Board of Nursing

(New Administrative Regulation)

201 KAR 20:067. Professional standards for medicinal cannabis.

RELATES TO: KRS 218B.010, 218B.015, 218B.050, 218B.080, 314.011, 314.042, 314.085, 314.089, 314.091

STATUTORY AUTHORITY: KRS 218B.010, 218B.015, 218B.050, 218B.080, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the Board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing as a medicinal cannabis practitioner.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Authorization" means a credential that authorizes the APRN to provide written certifications under KRS 218B.050 and this administrative regulation.

(3) "Bona fide practitioner-patient relationship" is defined by KRS 218B.010(1).

(4) "Cabinet" means the Cabinet for Health and Family Services.

(5) "Controlled substance" means any Schedule II, III, IV, or V controlled substance and does not include medicinal cannabis.

(6) "Good standing" means a license that at the time of initial application or renewal, is not:

(a) Limited, suspended, probated, revoked, or otherwise disciplined;

(b) Under investigation;

(c) Subject to monitoring, alternative discipline, or peer assistance; or

(d) Held by a person who has ever been subject to disciplinary action by any licensing entity, including the board of any jurisdiction or the United States Drug Enforcement Administration (DEA) that was based, in whole or in part, on the person's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug.

(7) "Medicinal cannabis" is defined by KRS 218B.010(15).

(8) "Medicinal cannabis practitioner" means an APRN who is holds an authorization under this administrative regulation.

(9) "Minor" means a person less than eighteen (18) years of age.
(10) "Immediate family member" is defined by 201 KAR 20:057, Section 1(5).

(11) "Prescription Drug Monitoring Program" or "PDMP" is defined by 201 KAR 20:057, Section 1(11).

(12) "Qualifying medical condition" is defined by KRS 218B.010(26).

(13) "Qualified patient" is defined by KRS 218B.010(25).

(14) "Telehealth" is defined by KRS 211.332(5).

(15) "Use of medicinal cannabis" is defined by KRS 218B.010(37).

(16) "Written certification" means a written certification for the use of medicinal cannabis and is defined by KRS 218B.010(39).

Section 2. Applicability. This administrative regulation does not apply to an APRN who recommends treatment with cannabis or a drug derived from cannabis under any of the following that are approved by an investigational review board or equivalent entity, the United States Food and Drug Administration, or the National Institutes for Health or any of its cooperative groups or centers under the United States Department of Health and Human Services:

- (1) A research protocol;
- (2) A clinical trial;
- (3) An investigational new drug application; or
- (4) An expanded access submission.

Section 3. Eligibility for an Authorization. (1) An APRN applicant for an authorization shall meet the following requirements:

(a) Holds an active, unrestricted Kentucky license as an APRN that is in good standing;

(b) Has a DEA registration and a current registration certificate is on file with the Board;

(c) Has an active account with the PDMP, a current PDMP registration certificate is on file with the Board;

(d) Has not been denied a license to prescribe, possess, dispense, administer, supply, or sell a controlled substance by the DEA or appropriate issuing body of any state or jurisdiction, based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, administering, supplying or selling a controlled substance or other dangerous drug;

(e) Has not held a license issued by the DEA or a state licensing administration in any jurisdiction, under which the person may prescribe, personally furnish, dispense, possess, administer, supply or sell a controlled substance, that has ever been restricted, based, in whole or in part, on the applicant's inappropriate prescribing, dispensing, administering, supplying, or selling a controlled substance or other dangerous drug;

(f) The applicant has not been subject to disciplinary action by any licensing entity that was based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug; and

(g) The applicant has completed the continuing education requirements in Section 6 of this administrative regulation.

(h) The applicant has no ownership or investment interest in or compensation agreement with a cannabis business licensed under KRS Chapter 218B.

(2) The Board shall provide the Cabinet with the names of all APRNs authorized to provide written certifications.

(3) An APRN who fails to renew the authorization or is otherwise unable to legally practice as a registered nurse or APRN shall not practice as or use the title of medicinal cannabis practitioner until an authorization has been issued by the Board.

(4) An APRN shall not provide written certifications unless authorized to do so under this section.

(5) It is not within the scope of practice for an APRN to provide written certifications, unless the APRN is authorized to do so under this section.

(6) The Board shall notify the Cabinet immediately with the name of any APRN whose authorization is lapsed, surrendered, suspended, revoked or otherwise not renewed.

Section 4. Procedures for submitting an initial application for

authorization. (1) An applicant for a certificate to recommend medicinal cannabis shall:

(a) Submit to the Board an Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis;

(b) Submit to the Board a copy of the APRN's DEA registration certificate;

(c) Submit a copy of the PDMP master account registration certificate to the Board;

(d) Submit proof of completion of the education requirements in Section 6(1) of this administrative regulation; and

(e) Pay a nonrefundable fee of \$100.

(2) An application shall be considered complete if all the following requirements are met:

(a) Evidence of all the requirements in subsection (1) of this section are received by the Board; and

(b) The APRN is not under investigation pursuant to 201 KAR 20:161 of evidence appearing to show that the applicant has violated KRS 314.091(1).

(3) Upon receipt of the application:

(a) The Board shall review all application materials submitted.

(b) The Board may contact individuals, agencies, or organizations for information about the applicant. As part of the application process, the Board may request an applicant to appear before the Board to answer questions or provide additional information.

(c) An applicant shall not withdraw an application for the authorization to provide written certifications without the approval of the Board.

(4) The following processes apply if an application is not complete within (6) six months of the date the application is received by the Board:

(a) If the application is not complete because required information or materials have not been received by the Board, the Board may notify the applicant that it intends to consider the application abandoned if the application is not completed. If an application is abandoned, the Board may close the application.

1. The notice shall specifically identify the information or materials required to complete the application and inform the applicant that the information or materials must be received by a specified date.

2. The notice shall also inform the applicant that if the application remains incomplete at the close of business on the specified date the application may be deemed to be abandoned.

3. If all of the information or materials are received by the Board by the specified date and the application is determined to be complete, the Board shall process the application. The Board may require updated information, as it deems necessary.

(b) If the application is not complete because the Board is investigating the applicant for a violation of KRS 314.091(1), the Board shall do both of the following:

1. Notify the applicant that although otherwise complete, the application shall not be processed pending completion of the investigation; and

2. Upon completion of the investigation and the determination that the applicant is not in violation of KRS 314.091(1), process the application. The Board may require updated information, as it deems necessary.

(5) Once submitted, the Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis shall follow the periods for length and renewal in accordance with 201 KAR 20:085, Sections 1 and 2.

(6) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at <https://kbn.ky.gov>.

Section 5. Renewal of the Authorization. (1) If the APRN fails to renew the authorization in accordance with 201 KAR 20:085, Sections 1 and 2, the authorization shall lapse.

(2) If the APRN fails to timely renew the authorization, the APRN may reapply as an initial applicant in accordance with the procedures set forth in Section 4 of this administrative regulation.

(3) The authorization may be renewed after an APRN's license to practice is has been renewed or restored, if the APRN:

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

regulation;

(b) Pays a nonrefundable fee of \$100; and

(c) Has completed the continuing education requirements in Section 6(2) of this administrative regulation.

(4) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at <https://kbn.ky.gov>.

Section 6. Continuing Education. (1) An applicant for an initial authorization shall have completed within the immediate twelve (12) months a one-time requirement of six (6) contact hours within in the following subjects:

(a) Diagnosing qualifying medical conditions;

(b) Treating qualifying medical conditions with medicinal cannabis; and

(c) The pharmacological characteristics of medicinal cannabis and possible drug interactions.

(2) Thereafter, an APRN renewing the authorization shall have obtained during the earning period three (3) continuing education hours in the subjects listed in subsection (1) of this section.

Section 7. Sanctions. (1) The Board may probate, restrict, suspend, revoke, or otherwise discipline an APRN's license or credential to issue authorizations for violations of KRS 314.091(1), or violations in accordance with KRS 218B.015(3)(b).

(2) An investigation against the APRN under this administrative regulation shall be conducted in accordance with 201 KAR 20:161.

(3) A disciplinary proceeding against the APRN under this administrative regulation shall be conducted in accordance with KRS 314.091 and 201 KAR 20:162.

(4) APRN may be ordered by the Board to undergo a substance use evaluation and be subject to an immediate temporary suspension, in accordance with KRS 218B.015(4), 314.085, and 314.089.

Section 8. Professional Standards of Care for Providing Written Certifications. (1) An APRN authorized by the Board to provide written certifications may only provide a patient with a written certification after the APRN:

(a) Has established a bona fide practitioner-patient relationship with the patient in an in-person visit that complies with this administrative regulation and for which there is an expectation that the APRN will provide a plan of care for the patient;

(b) Has diagnosed the patient, or confirmed a diagnosis provided by another medicinal cannabis practitioner, with a qualifying medical condition for which the medicinal cannabis practitioner believes that the patient may receive therapeutic or palliative benefit from the use of medicinal cannabis;

(c) Has reviewed a report of information from the PDMP related to the patient for a period of time that covers at least the twelve (12) months immediately preceding the date of the report;

(d) Consulted with the patient, or the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor child, with respect to the possible risks and side effects associated with medicinal cannabis, including possible interactions between medicinal cannabis and any other drug or medication that the patient is taking at that time; and

(e) Obtained the written consent of the patient's custodial parent or legal guardian responsible for providing consent to treatment, if the patient is a minor child.

(2) A bona fide practitioner-patient relationship may be established following a referral from the patient's primary care provider and may be maintained via telehealth. However, a bona fide practitioner-patient relationship shall not be established via telehealth.

(3)(a) When issuing a written certification to a patient, the APRN shall use the Cabinet's Written Certification Form in accordance with KRS 218B.050(6);

(b) An initial written certification shall be provided during the course of an in-person examination of the patient by the APRN. Subsequent written certifications, including for the purpose of renewing a registry identification card, may be provided electronically or during the course of a telehealth consultation.

(c) For the purpose of applying for a registry identification card,

a written certification provided under this section shall:

1. Be valid for a period of not more than sixty (60) days;

2. The APRN may renew a written certification for not more than three (3) additional periods of not more than sixty (60) days each; and

3. The APRN shall not issue another certification to the patient until an examination of the patient has been conducted by the APRN.

(d) Within twenty-four (24) hours of providing a patient with a written certification, the APRN shall record the issuance of the written certification in the PDMP.

(4)(a) An APRN who provides written certifications shall comply with the professional standards established in this section.

(b) Prior to providing a written certification, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall include:

a. The patient's name;

b. Date or dates of office visits or treatments, and responses to treatments;

c. The patient's medical history, including relevant prescription history and diagnostic results;

d. The patient's history of drug use, including a documented review of the patient's current medication to identify possible drug interactions, including benzodiazepines and opioids;

e. Based on evidence or behavioral indications of addiction or drug abuse, the APRN shall obtain a drug screen on the patient. It is within the APRN's discretion to decide the nature of the screen and which type of drug to be screened;

f. The patient's social and family history;

g. A physical examination relevant to the current medical condition;

h. The patient's psychiatric history;

i. A focused physical examination of the patient relevant to the patient's current medical condition;

j. Documented review that standard medical treatment has been attempted or considered. If standard medical treatment is not attempted, the APRN shall document the reasons that standard medical treatment is not appropriate for this patient;

k. The APRN's diagnosis of the patient's qualifying medical condition; and

l. If the patient has been previously diagnosed with a qualifying medical condition by a medicinal cannabis practitioner, the APRN may confirm the diagnosis if:

(i) The APRN obtains a copy of the medical records or a detailed written summary indicating the diagnosis; and

(ii) The APRN is satisfied that those records confirm a diagnosis of a qualifying condition.

(iii) The APRN shall maintain a copy of any record or report of any medicinal cannabis practitioner on which the practitioner relied for purposes of meeting the requirements under this paragraph.

(iv) Document a plan to obtain the patient's consent in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

(v) Obtain and review a PDMP report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

(vi) Explain treatment alternatives, the risks, and the benefits of medicinal cannabis with the patient;

(vii) Obtain written informed consent from the patient for treatment;

(viii) Discuss and document the patient's treatment with the patient's other providers;

(ix) If the patient is a female of childbearing potential and age, meet the requirements of subparagraph 2. of this paragraph.

2.a. Prior to initiating treatment, the APRN shall require that female patients of childbearing age submit to a pregnancy test and, if pregnant, the APRN shall provide counseling. The APRN shall

document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

b. Prior to providing a written certification to a patient who is pregnant or breastfeeding, the APRN shall document the patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision.

(5) The written certification shall include a statement from the APRN certifying that:

(a) A bona fide practitioner-patient relationship exists between the APRN and patient.

(b) The patient has been diagnosed with at least one (1) qualifying medical condition for which the APRN believes the patient may receive medical, therapeutic, or palliative benefit; and

(c) In the APRN's professional medical opinion, the patient may receive medical, therapeutic, or palliative benefit from the use of medicinal cannabis.

(6) An APRN who authorizes a written certification shall be available to provide follow-up care and treatment to the patient, including physical examinations relevant to the patient's condition to determine the efficacy of medicinal cannabis in treating the patient's qualifying medical condition. If the qualifying condition was indicated as a terminal illness in the prior six (6) months, the APRN shall confirm whether the patient's condition continues to be a terminal illness.

(7) The APRN shall terminate or decline to issue a new written certification under any of the following circumstances:

(a) The patient no longer has the diagnosis of, or symptoms of, the qualifying medical condition.

(b) The APRN is not authorized to issue a written certification.

(c) Based on the APRN's clinical judgement, the patient or caregiver is abusing or diverting medicinal cannabis.

(d) The patient is deceased.

(8) The APRN shall notify the Cabinet in writing within thirty (30) days the name of any patient for whom the APRN has terminated or declined to issue a written certification.

(9) The records required for the recommendation for a written certification may be kept with the patient's other medical records and shall be retained for at least five (5) years following the last office visit by the patient.

(10) An APRN medicinal cannabis practitioner shall not:

(a) Dispense medicinal cannabis; or

(b) Provide a written certification to an immediate family member or for himself or herself.

Section 9. Documented Deviation from Professional Standards for Providing Written Certifications. If an APRN is unable to conform to professional standards for providing written certifications set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN shall document those circumstances in the patient's record and only provide a written certification to the patient if the patient record appropriately justifies the providing of a written certification under the circumstances.

Section 10. Material Incorporated by reference. (1) "Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis", 09/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>.

AUDRIA DENKER, President

APPROVED BY AGENCY: September 7, 2023

FILED WITH LRC: September 12, 2023 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222.

Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2023, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov. Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the credentialing, continuing education requirements, sanctions, and professional standards for APRNs authorized to practice as medicinal cannabis practitioners.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish standards for APRNs authorized to practice as medicinal cannabis practitioners in the Commonwealth of Kentucky pursuant to KRS Chapter 218B.

(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 setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for APRNs authorized to practice as medicinal cannabis practitioners.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect APRNs with a Drug Enforcement Administration (DEA) registration, at this time, approximately 2300

(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. The APRNs that wish to be authorized to practice as medicinal cannabis practitioners will have to submit an application, provide documentation or otherwise complete the credentialing requirements, and pay a fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If an APRN wishes to be authorized to practice as a medicinal cannabis practitioner there will be a \$100 initial fee, as well as a \$100 renewal fee each licensure period.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The APRN will be authorized to practice as a medicinal cannabis practitioner.

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

(a) Initially: No additional cost, beyond staff processing of

authorization applications.

(b) On a continuing basis: No additional cost, beyond staff processing of authorization applications.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An initial and renewal fee is established. The fee for each \$100.

(9) TIERING: Is tiering applied? Tiering is not applied because all applicants are in the same class and treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS Chapter 218B.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? The initial application fee is \$100.

(d) How much will it cost the regulated entities for subsequent years? The annual renewal application fee is \$100.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 45:105. Land application of biosolids.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 224.50-765, 40 C.F.R. Part 503

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow the use of a waste site or facility to obtain a permit. This administrative regulation establishes the standards and requirements for the application of biosolids, in accordance with 40 C.F.R. Part 503 and as required by KRS 224.50-765 from the treatment of domestic sewage or sewage sludge from a treatment facility. This administrative regulation is no more stringent than the corresponding federal rules but in order to comply with KRS 224.50-765(3), does have additional requirements that are not in 40 C.F.R. Part 503 related to a permitting program and siting criteria.

Section 1. Definitions.

(1) "Karst feature" means sinkholes, sinking streams, cave openings, fensters, and springs.

(2) "Ordinary high-water mark" means the line on the shore of a body of water established by the fluctuations of water and indicated by physical characteristics, such as defined, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and the presence of litter and debris.

(3) "Seasonal high-water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in years with normal rainfall.

(4) "Sinkhole" means a depression in the land surface resulting from the chemical dissolution of the underlying carbonate rocks that create a potential direct conduit from surface water flow into the underlying groundwater system. This includes the immediately adjacent catchment area that could direct surface water flow into the underlying groundwater system.

Section 2. General Provisions. The general provisions related to the land application of biosolids shall be as established in 40 C.F.R. 503.5 through 40 C.F.R. 503.9.

Section 3. Land Application of Biosolids. (1) Except for additional siting criteria standards established in Section 5 of this administrative regulation, the requirements related to the application of biosolids to the land shall be as established in 40 C.F.R. 503.10 through 40 C.F.R. 503.18.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the land application site while biosolids are being applied to the land. All sludge land application operations shall be accomplished under the direction of a certified landfarming operator.

(3) The reports required by 40 C.F.R. 503.18 shall also be sent to the Kentucky Division of Waste Management.

(4) Permittees shall submit to the cabinet "Annual Biosolids Land Application Report", form DEP 4506 by March 31st of each year on the land application activity that occurred in the previous year. Permittees shall submit the report for years with no land application activity.

(5) In addition to the notification requirements in 40 C.F.R. 503.12, the person who prepares the biosolids shall notify the persons applying the biosolids or owner or operator of a biosolids land application site that the biosolids may contain constituents from an industrial pretreatment program.

(6) The notifications provided pursuant to subsection (5) of this section shall be given to adjoining landowners by the persons applying the biosolids or owner or operator of a biosolids land application site.

Section 4. Pathogens and Vector Attraction Reduction. The requirements related to the reduction of pathogens and the vectors that could transport those pathogens shall be as established in 40 C.F.R. 503.30 through 40 C.F.R. 503.33.

Section 5. Siting Criteria for Land Application of Biosolids. The land application of biosolids shall comply with the siting criteria in subsections (1) through (4) of this section.

(1) Biosolids shall not be applied in the 100-year floodplain.

(2) (a) A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated and alluvial (Ohio River Alluvium) aquifers. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document. Buffers located in subsection (4) of this section shall be maintained for aquifer types in this paragraph.

(b) Buffers located in the table in subsection (4) of this section shall be maintained for land application in areas comprised of karst, shallow fracture and deep granular- consolidated, and localized fracture and minor karst aquifer types. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document.

(3) A land application unit shall not be located on land with a slope greater than fifteen (15) percent.

(4) (a) The ten (10) meter buffer zone for surface waters listed in 40 C.F.R. 503.14(c) shall not be used. All biosolid land application facilities shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet from the Boundary of the Application Zone	
Structure or Object	Application Buffer
Residences and Occupied Buildings	200
Water Well	200
Surface Water including Perennial Streams	100
Karst Feature	100
Intermittent Stream	50
Ephemeral Stream	30
Property Line and Public Roads	30

(b) The distances measured for buffer zones shall be as established in subparagraphs 1. through 7. of this paragraph:

1. Residences and occupied buildings shall be measured from the building or residence to the closest boundary of the area that land application will occur.

2. Water wells buffer shall be measured from the well to the closest boundary of the area that land application will occur.

3. Surface Water including perennial streams buffer shall be measured from the baseline stream bank to the closest boundary of the area that land application will occur.

4. Karst features buffer shall be measured from the feature to the closest boundary of the area that land application will occur.

5. Ephemeral streams buffer shall be measured from the ordinary high-water mark to the closest boundary of the area that land application will occur.

6. Property line buffers shall be measured from the property line to the closest boundary of the area that land application will occur.

7. Public roads buffer shall be measured from the edge of the road to the closest boundary of the area that land application will occur.

Section 6. Biosolids Land Application Permit Required. (1) All persons operating under a permit issued prior to June 29, 2023 for the land application of biosolids shall operate in accordance with that permit until a renewal permit is issued by the cabinet. At the time for renewal, the applicant shall apply for a new permit under this administrative regulation.

(2) All persons seeking to engage in the land application of biosolids after June 29, 2023 shall first obtain a permit issued in accordance with this administrative regulation from the cabinet prior to land application.

Section 7. Biosolid Land Application Permit Review. (1) Persons

applying for a biosolids land application permit shall submit "Application for a Biosolid Land Application Facility Permit" form DEP 4505. The completed permit application shall be submitted to the cabinet and include all of the attachments that are required by the application form. The attachments in the application shall include:

(a) Copies of property deeds or land application agreements;

(b) Lists of landfills receiving biosolids;

(c) Laboratory analysis of the biosolids;

(d) An enlargement of a current United States Geological Survey topographic map. The map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published; and

(e) A certification statement.

(2) A fee in the amount specified in 401 KAR 45:250 shall accompany the permit application, unless the applicant is a municipality.

(3) The cabinet shall not require additional information that is not in the permit application. Any additional information requests shall be in the form of a notice of deficiency or in response to a variance request from the applicant pursuant to 401 KAR 30:020.

(4) The cabinet shall not review a permit application until the application has been deemed complete. An application for a biosolids land application permit shall be considered complete unless the forms submitted are incomplete or otherwise missing information which is necessary for review.

(5) If the application is determined to be incomplete, the cabinet shall notify the applicant of all the deficiencies that render it incomplete and the applicant shall have the right to correct deficiencies identified by the cabinet. If the cabinet determines that the application is incomplete two or more times, that determination shall be considered final and the applicant shall have the right to file a petition pursuant to KRS 224.10-420.

(6) (a) The cabinet shall review complete applications and issue a final determination within 120 calendar days of the official day the permit application was received.

(b) The official date of receipt for a permit application shall be:

1. The date the paper document is stamped received by the Division of Waste Management; or

2. The submission date created by electronic submittal portal.

(c) The cabinet's review timeframe shall be paused from the date:

1. The cabinet mails, hand delivers, or electronically sends a notice of deficiency until the date the Division of Waste Management receives the response to the deficiencies as established in paragraph (b) of this subsection; and

2. A permit application is subject to an adjudicatory process that prevents the cabinet from making a determination to the date the administrative or judicial hearings are final and the parties are in compliance with the final orders resulting from those hearings.

(d) The timetables established in this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

Section 8. Modification of Permits. A biosolids land application permit may be modified during its term. The modification shall be in accordance with this section.

(1) If a permit is modified, only the conditions subject to modification shall be reopened.

(2) Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a completed "Application for a Biosolid Land Application Facility Permit" form DEP 4505, to the cabinet.

(3) Causes for modification. Causes for modification of permits shall include:

(a) Material and substantial alterations or additions to the permitted special waste site or facility that would justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has

little or no control and for which there is no reasonable available remedy;

(c) The cabinet receiving notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;

(d) The corrective action program established in the permit has not brought the site into compliance with the groundwater protection standards;

(e) To approve a corrective action plan required by 401 KAR 45:160;

(f) To include conditions applicable in new or amended statutes or administrative regulations;

(g) To include conditions applicable as a result of a hearing or enforcement action as established in 401 KAR Chapter 40;

(h) Ownership of the special waste site or facility changes;

(i) To expand the capacity of a special waste site or facility; or

(j) To add a new special waste source.

(4) All terms of an existing permit shall remain in effect during the permit modification request.

(5) The cabinet shall make a final determination to approve or disapprove a permit modification within ninety (90) calendar days.

Section 9. Permit Transfers. A permit shall not be transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application shall be required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(1) A person requesting to transfer a permit for an existing special waste site or facility shall submit to the cabinet a completed Application to Transfer a Special Waste Permit form DEP 7094C, incorporated by reference in 401 KAR 45:040.

(2) The cabinet shall make a final determination to approve or disapprove a formal permit transfer within sixty (60) calendar days.

(3) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame. Failure to submit information noted by the cabinet related to the deficiencies within fifteen (15) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

Section 10. Suspension and Revocation of Biosolid Land Application Permits. (1) The cabinet may modify, suspend, or revoke a permit issued under this chapter for:

(a) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031;

(b) Aiding, abetting, or allowing the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031;

(c) A Violation of a condition or a variance of the special waste site or facility permit;

(d) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;

(e) Failure to comply with an order issued by the cabinet; or

(f) The facility is transferred to another person without prior approval of the cabinet.

(2) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(3) If a permit is revoked, the owner or operator may reapply.

(4) Upon revocation of a permit, an owner or operator of a special waste site or facility may file a request for a hearing. A hearing request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 11. Permit Renewals. (1) Applications for renewal shall be submitted to the cabinet ninety (90) calendar days prior to the expiration of the permit. Persons applying for a renewal shall submit a completed Application for a Biosolid Land Application Facility Permit form DEP 4505, to the cabinet.

(2) Applications for renewal shall be subject to the review

requirements in this administrative regulation.

(3) The cabinet shall consider whether all conditions of prior permit conditions have been met.

Section 12. Closure of a Biosolid Landfarming Site or Facility. (1) A landfarming site or facility shall send a letter of closure to the cabinet if:

(a) An owner or operator determines to permanently cease accepting biosolid at a special waste landfarming site or facility and does not exceed limits pursuant to Section 3 of this administrative regulation; or

(b) The landfarming site or facility has reached the limits in 40 C.F.R. 503.13 and is required to cease accepting biosolid at that location.

(2) The notification shall be a letter to the cabinet indicating the special waste landfarming site or facility is in compliance with regulatory requirements and is no longer accepting biosolid at the location.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Biosolid Land Application Facility Permit", Form DEP 4505, (July 2023);

(b) "Annual Biosolids Land Application Report", Form DEP 4506, (July 2023); and

(c) "Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers" (July 2023).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" 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 November 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: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for the land application of biosolids in conformance with 40 C.F.R. Part 503.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of SB 213 (KRS 224.50-765).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the authorizing statutes by referencing 40 C.F.R. Part 503 as the means to land apply biosolids. The statute also requires the cabinet to establish siting criteria and a permitting program. This administrative regulation establishes a permitting program and siting criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by following the requirements of the statute to set up a land application program that is in conformance with 40 C.F.R. Part 503 with a permitting program and siting criteria.

(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: The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(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: Each entity mentioned in question (3) will need to follow the referenced portions of 40 C.F.R. Part 503 as well as obtain a permit from the cabinet prior to applying biosolids to the land. The applicant will also need to comply with the siting criteria that is established in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entities in complying with this administrative regulation. A permit was required prior to this proposed administrative regulation that had a permit application listed on 401 KAR 45:250. This administrative regulation requires the same permitting fee in 401 KAR 45:250 as did the older permitting program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have a streamlined process for the land application of biosolids that is in conformance with the corresponding federal regulation.

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

(a) Initially: There will not be a cost to the agency to implement this new administrative regulation.

(b) On a continuing basis: There will not be a cost to the agency to implement this new administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program will be a mix of restricted funds from the fees charged for application review and 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 not be a need to increase fees or funding associated with this new administrative regulation. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees associated with this administrative regulation. The current fee that is charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

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 not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(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, 224.40-305, 224.50-760, KRS 224.50-765, 40 C.F.R. Part 503

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue. The fee in 401 KAR 45:250 will apply to the applications in this administrative regulation. There will not be any additional applications they are just shifted to the new process under this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years? Currently the agency does not believe there will be an increase in costs to run the program in the future.

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

Revenues (+/-): This new administrative regulation will not generate any new revenues due to the biosolids being mainly regulated by 40 C.F.R. Part 503. The cabinet will charge the same for this new permitting process as it did for the existing permitting process for the regulation of these materials.

Expenditures (+/-): The cabinet will use existing staff and the same funding source to process and regulate biosolids under this new material.

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? Regulated entities will save \$500 per application. The current process is to charge \$500 for a notice of intent and then an additional \$5,000 for a formal application. This new process does not have a notice of intent and therefore the applicant will not be required to pay the \$500.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? The savings in subsequent years will depend on the number of applications received by the agency. The applicant will still save \$500 per application due to the notice of intent not being required.

(c) How much will it cost the regulated entities for the first year? There will not be a cost increase to regulated entities related to this proposal. This material is currently permitted and regulated by the cabinet and a fee of \$5,500 (for new formal permits) will be reduced to \$5,000 with this new proposal.

(d) How much will it cost the regulated entities for subsequent years? The cost in subsequent years will depend on the number of applications submitted by regulated entities.

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

Cost Savings (+/-): The cost savings will be \$500 per application. However, a definite cost savings cannot be provided as it will depend on the number of applications received.

Expenditures (+/-): The expenditures will be relatively the same except for the cost savings mentioned above.

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 40 C.F.R. Part 503.

(2) State compliance standards. KRS 224.50.760, 224.50-765.

(3) Minimum or uniform standards contained in the federal mandate. The federal citation sets standards for the management of sewage sludge. 40 C.F.R. Part 503 covers landfilling, composting, incinerating, and land applying this material. The cabinet is required by KRS 224.50-765 to promulgate administrative regulations that are in conformance with Part 503 related to the land application of those sludges (biosolids as defined in KRS 224.765(1)).

(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 is not more stringent than the corresponding federal requirements. However, as required by KRS 224.50-765(3), the administrative regulation does include additional siting criteria and a formal permitting program.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.50-765 (SB 213 from the 2023 Legislative Session) required the cabinet to establish these additional items.

PUBLIC PROTECTION CABINET Department of Financial Institutions (New Administrative Regulation)

808 KAR 10:501. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings.

RELATES TO: KRS 292.330, 292.410, 292.411, 292.412

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS

292.412(2) requires the commissioner to prescribe the filing procedure and form to be used by registered broker-dealers operating an Internet Web site pursuant KRS 292.411(1)(r). KRS 292.412(3), (5), (6), (7), and (8) require the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators. This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption. KRS 292.410(1)(q) allows for exemptions from registration by rule or order of the commissioner.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 292.310(4).

(2) "Completion of an offering" means the occurrence of one (1) of the following:

(a) The date upon which the offering deadline expires;

(b) The date upon which the transaction becomes void pursuant to KRS 292.411(1)(i); or

(c) If the offering is closed prior to the offering deadline pursuant to KRS 292.411(k), the date of early closing.

(3) "Internet Web site operator" means a person registered as an Internet Web site operator pursuant to KRS 292.412.

Section 2. Issuer Notice Filings. An issuer making a notice filing pursuant to KRS 292.411(1)(f) shall complete and submit the following:

(1) Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form with all required attachments;

(2) Form CF 2, Final Report of Sales Form no later than thirty (30) days after the completion of an offering conducted pursuant to KRS 292.411; and

(3) A filing fee of \$500.

Section 3. Registration of Internet Web Site Operators.

(1) A person applying for registration as an Internet Web site operator shall complete and submit the following:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments;

(b) Form CF 4, Internet Web Site Operator Surety Bond Form; and

(c) A filing fee of \$250.

(2) An Internet Web site operator applying to renew its registration for the following calendar year pursuant to KRS 292.412(6) shall complete and submit the following between December 1 and December 15 of the preceding calendar year:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments; and

(b) A renewal fee of \$250.

(3) Except as provided in subsection (4) of this section, an initial registration shall be effective until December 31 of the year in which the initial registration is approved by the commissioner.

(4) An initial registration approved after November 30 shall be effective until December 31 of the following calendar year.

Section 4. Broker-dealer Notice Filings.

(1) Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form shall be completed by a broker-dealer making a notice filing pursuant to KRS 292.412(2).

(2) A notice filing shall be filed before the broker-dealer operates an Internet Web site pursuant to KRS 292.411(1)(r).

(3) Except as provided in subsection (4) of this section, a notice filing made pursuant to this section shall be effective until December 31 of the year in which the filing is made.

(4) A notice filing made between December 1 and December 31 of the year in which a previous notice filing expires shall be effective for the subsequent calendar year.

Section 5. Recordkeeping Requirements.

(1) An issuer shall accurately make and keep the following books and records relating to any offer or sale made pursuant to KRS 292.411:

- (a) All forms and documents that are required by KRS 292.411 or this administrative regulation to be filed with the commissioner;
- (b) Evidence of residency from each purchaser in any offering made by the issuer as required by KRS 292.411(1)(o);
- (c) Evidence of accredited investor status for each purchaser making an investment exceeding \$10,000 as required by KRS 292.411(1)(e) and (o);
- (d) Evidence reflecting all offers made by the issuer;
- (e) Evidence reflecting all sales made by the issuer;
- (f) Manually or electronically signed copies of all purchaser certifications as required by KRS 292.411(1)(n);
- (g) All limited notices distributed in accordance with KRS 292.411(1)(r)7.;
- (h) All notices of cancellation of commitment to invest pursuant to KRS 292.411(1)(j);
- (i) All notices of closing of an offering prior to the offering deadline delivered pursuant to KRS 292.411(1)(k);
- (j) Quarterly reports made pursuant to KRS 292.411(1)(t); and
- (k) All other communications with purchasers in the offering.
- (2) An Internet Web site operator shall accurately make and keep the following books and records:
 - (a) Records of fees received pursuant to KRS 292.412(4)(a);
 - (b) All agreements with issuers offering securities through the Internet Web site operator's Web site;
 - (c) All information provided to the Internet Web site operator by an issuer to establish that the issuer is organized under the laws of Kentucky and authorized to do business in Kentucky as required by KRS 292.411(1)(r)1.;
 - (d) Evidence reflecting the limitation of Web site access as required by KRS 292.411(1)(r)3.;
 - (e) All correspondence or other communications with issuers, prospective purchasers, or purchasers;
 - (f) All information made available through the Internet Web site relating to an offering; and
 - (g) Any other information provided by or through the Internet Web site operator to issuers, prospective purchasers, or purchasers.

Section 6. Kentucky Intrastate Crowdfunding Examination Fees. The fee for a routine examination of an Internet Web site operator shall be fifty (50) dollars per working hour. A fee shall not be charged for examination work by an examiner-trainee.

Section 7. Federal Crowdfunding Notice Filing Provisions.

- (1) The following provisions apply to offerings made under Federal Regulation Crowdfunding (17 C.F.R. § 227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:
 - (a) For an issuer that either (1) has its principal place of business in this state or (2) sells fifty (50) percent or greater of the aggregate amount of the offering to residents of this state, the issuer shall file the following with the commissioner:
 1. A completed Form U-CF, Uniform Notice of Federal Crowdfunding Offering form, or copies of all documents filed with the Securities and Exchange Commission;
 2. A consent to service of process on Form U-2 if not filing on Form U-CF; and
 3. A filing fee of \$300;
 - (b) For an issuer that has its principal place of business in this state, the filings required under paragraph (a) of this subsection shall be filed with the commissioner when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission; and
 - (c) For an issuer that does not have its principal place of business in this state, but where residents of this state have purchased fifty (50) percent or greater of the aggregate amount of the offering, the filing required under paragraph (a) of this subsection shall be filed when the issuer becomes aware that such purchases have met this threshold, and in no event later than thirty (30) days from the date of completion of the offering.
- (2) The initial notice filing required under subsection (1) of this section is effective for twelve months from the date of the filing with the commissioner.
- (3) For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under 17 C.F.R.

§ 227 and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 shall renew the initial notice filing required under subsection (1) of this section by filing the following on or before the expiration of the initial notice filing:

- (a) A completed Form U-CF marked "renewal";
- (b) A cover letter requesting renewal; and
- (c) A renewal fee of \$300.

Section 8. Incorporation by reference.

- (1) The following material is incorporated by reference:
 - (a) "Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form", September 2023;
 - (b) "Form CF 2, Final Report of Sales Form", September, 2023;
 - (c) "Form CF 3, Internet Web Site Operator Registration Form", September 2023;
 - (d) "Form CF 4, Internet Web Site Operator Surety Bond Form", September 2023; and
 - (e) "Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form", September 2023.
- (f) "Form U-2, Uniform Consent to Service of Process, September 2023
- (g) "Form U-CF, Uniform Notice of Federal Crowdfunding Offering", September 2023
- (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 4:30 p.m. This material may also be obtained at kfi.ky.gov.

JUSTIN BURSE, Acting Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: September 14, 2023

FILED WITH LRC: September 15, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 9:00 a.m., at 500 Mero Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments to the Department on the proposed administrative regulation. Written comments shall be accepted through November 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 persons.

CONTACT PERSON: Gary Stephens Asst. General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9046, fax 502-573-8787, email Gary.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides for required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and Notice filing requirements for federal crowdfunding offerings.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS 292.412(2) requires the commissioner to prescribe the filing procedure

and form to be used by registered broker-dealers operating an Internet Web site pursuant KRS 292.411(1)(r). KRS 292.412(3), (5), (6), (7), and (8) require the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.

(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: All business entities engaged in crowdfunding activities that require registration, or a qualified exemption from registration, under KRS Chapter 292. The number of entities engaged in this activity is undetermined at this time but is anticipated to be minimal.

(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 entity engaged in a crowdfunding offering will need to file the required applicable notice form with the Department along with a filing fee, as referenced in the statute and set by this regulation, of \$300. The entity will need to notice file with the department every twelve months for renewal of the exemption of the active crowdfunding registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will be required to file an annual notice filing fee of \$300.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be exempt for registration with the department upon qualified notice filing with the department.

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

(a) Initially: Costs to implement this regulation amendment will be incorporated into the current budget and will be minimal.

(b) On a continuing basis: Costs for subsequent years will be incorporated into the department's budget and will be minimal.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is a \$300 filing fee for notice filing the exemption with the department. The controlling statute indicates a fee would be assessed and determined by the commissioner.

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation did not require tiering to be applied to implement.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be

impacted by this administrative regulation? The Department of Financial Institutions

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3), 292.410, 292.411(1), and 292.412

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amended regulation should have no financial impact on state or local government agencies.

(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 effect on overall revenue for the Department will be minimal and will not have a substantial impact on the Department's budget.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated in subsequent years is expected to be minimal to the Department.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate additional cost to implement this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate additional costs to implement this regulatory change 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: There will be minimal fiscal impact on the Department in terms of implementation or revenue based on the relatively small amount of the fee.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the industry and the department will be achieved by timely filing of the notice. Therefore, costs savings to the entities will be determined by internal controls of the regulated entity.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings will be achieved by timely filing of the notice. Therefore, costs savings to the entities in subsequent years will be determined by internal controls of the regulated entity.

(c) How much will it cost the regulated entities for the first year? The cost to the entity claiming the exemption will be dependent upon the timely filing of the notice forms and submission of the \$300 filing fee.

(d) How much will it cost the regulated entities for subsequent years? There will be a \$300 fee for renewals of the exemption notice.

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 costs incurred to the regulated entity are directly related to their internal controls and filing of the exemption notice and filing fee.

(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 new regulation will not have a major economic impact on the regulated entities or the Department.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 12, 2023

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 12, 2023 at 1:00 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; Senators Julie Raque Adams, Damon Thayer, and 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 Standards Professional Board; Jennifer Scuthfield, Secretary of State; Leslie Saunders, John Steffan, Registry of Election Finance; Charla Sands, Department of Military Affairs; Joe Donohue, Board of Accountancy; Eden Davis, Amber Harding, Johana Swiney, Board of Pharmacy; Marc Kelly, Board of Social Work; Matt Byrd, Doug Hardin, Boxing and Wrestling Commission; Samuel Thorner, Kentucky Housing Corporation; Eddie Sloan, John Wood, Board of Emergency Medical Services; Dave Dreves, Steven Fields, Jenny Gilbert; Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Jonathan Gifford, Law Enforcement Council; Kara Daniel, Adam Mather, Office of Inspector General; Julie Brooks, Bob McFalls, Kyndall Raburn, Department for Public Health; Wesley Duke, Lisa Lee, Jonathan Scott, Department for Medicaid Services; John Bowman, Dream.org; Steve Houghland, Molly Lewis; KY Primary Care Association; Ann Perkins, Safe Harbor; Sheila Schuster, Advocacy Action Network; Melvyn Yeoh, DMD, University of Kentucky.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

016 KAR 002:240E. Interim certificate. Cassie Trueblood, counsel, represented the board.

SECRETARY OF STATE: Safe at Home Program

030 KAR 010:010E. Definitions for 30 KAR Chapter 10. Jennifer Scuthfield, assistant secretary of state, represented the office.

030 KAR 010:020E. Application and certification.

030 KAR 010:030E. Notification of expiration and recertification in the Safe at Home Program.

030 KAR 010:040E. Cancellation, appeal, and withdrawal.

030 KAR 010:050E. Application assistant training and designation.

030 KAR 010:060E. Release of participant information to criminal justice officials or agencies.

030 KAR 010:070E. School enrollment and record transfers.

030 KAR 010:080E. Substitute address.

030 KAR 010:090E. Exercise of program participant's privileges.

030 KAR 010:100E. Attaining age of majority.

030 KAR 010:110E. Service of process.

030 KAR 010:120E. Recognition of certification in other state.

Kentucky Registry of Election Finance: Reports and Forms

032 KAR 001:020. Statement of spending intent and appointment of campaign treasurer. Leslie Saunders, general counsel, and John Steffen, executive director, represented the registry.

In response to a question by Representative Grossberg, Mr. Steffen stated that these administrative regulations applied to all political parties. Changes were based on recent legislation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and

with agreement of the agency, the amendments were approved.

032 KAR 001:030. Campaign finance statements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

032 KAR 001:046. Repeal of 32 KAR 1:045 and 32 KAR 1:070.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

032 KAR 001:050. Political organization registration.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department 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. Charla Sands, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend 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.

BOARDS AND COMMISSIONS: Kentucky State Board of Accountancy

201 KAR 001:050. License application. Joe Donohue, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Pharmacy

201 KAR 002:076. Compounding. Eden Davis, general counsel, and Amanda Harding, pharmacist inspector, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 and 8 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work

201 KAR 023:160E. Temporary permission to practice. Marc Kelly, executive director, represented the board.

Boxing and Wrestling Commission

201 KAR 027:005. Definitions for 201 KAR Chapter 27. Matt Byrd, executive director, and Doug Hardin, staff attorney, represented the commission.

In response to questions by Co-Chair Lewis, Mr. Byrd stated that he believed licensure fees were last addressed between 2006 and 2008. Contestant licensing had been established by administrative regulation for many years.

In response to a question by Senator Yates, Mr. Byrd stated that if a youth amateur boxing event charged admission, the event came under the commission's regulatory jurisdiction; therefore, there was effectively a statutory prohibition on charging admission for youth amateur boxing events. Mr. Hardin stated that there had been a bill during the 2023 Regular Session of the General Assembly to address the issue of youth amateur boxing events; however, that bill did not pass.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 027:008. License requirements and fees.

A motion was made and seconded to approve the following amendments: to amend Section 10 and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 027:011. General requirements for boxing and kickboxing shows.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 20, and 23 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 027:012. General requirements for wrestling shows.

201 KAR 027:016. General requirements for mixed martial arts matches, shows, or exhibitions.

In response to a question by Senator Yates, Mr. Byrd stated that changes to weight classes and ranges applied to mixed martial arts only.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 18, 20, and 24 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Housing Corporation

202 KAR 002:020E. Rural Housing Trust Fund. Samuel Thorne, general counsel, represented the corporation.

Board of Emergency Medical Services

202 KAR 007:555. Ground agencies. Eddie Sloan, executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Jenny Gilbert, legislative liaison, represented the department.

301 KAR 001:410. Taking of fish by nontraditional fishing methods.

In response to a question by Co-Chair Lewis, Mr. Dreves stated that traditional fishing meant using a rod and reel. Any other legal method of fishing was classified as nontraditional.

DEPARTMENT OF AGRICULTURE: Amusement Rides

302 KAR 016:010. Business registration and permit for amusement rides or attractions. Clint Quarles, counsel, represented the department.

In response to questions by Senator Yates, Mr. Quarles stated that rides could be verified as registered with the department by a seal on the ride and by contacting the department, which could also provide insurance information in the event of an injury.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to establish that a permit expires at the end of the calendar year; (2) to amend Section 4 to clarify submission procedures for itineraries; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:020. Inspection and operation of amusement rides or amusement attractions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:071. Repeal of 302 KAR 16:070.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:072. Notification of occurrence involving an amusement ride or attraction.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:111. Violations, civil penalties, revocations, and suspensions of permits for amusement rides or attractions.

Grain

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to establish application and renewal procedures for grain dealer and grain warehouse operator licenses; (2) to amend Sections 4 and 5 to clarify deadlines for

moving grain out of temporary storage; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Section 1 through 8; and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Justice: Kentucky Law Enforcement Council

503 KAR 001:140E. Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant general counsel, and Jonathan Gifford, staff attorney, represented the department.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need

900 KAR 006:080E. Certificate of Need emergency circumstances. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the division.

Department for Public Health: Health Services and Facilities

902 KAR 020:500. Medical reserve corps. Julie Brooks, regulation coordinator; Bob McFalls, branch manager; and Kyndall Raburn, public health associate, represented the department.

Department for 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. Wes Duke, general counsel; Lisa Lee, commissioner; and Jonathan Scott, regulation coordinator, represented the department. John Bowman, campaign coordinator, Dream.org; Dr. Melvyn Yeoh, University of Kentucky; Ann Perkins, Safe Harbor Kentucky; Sheila Schuster, executive director, Kentucky Mental Health Coalition; and Alicia Whatley, Kentucky Oral Health Coalition, appeared in support of 907 KAR 1:038, 1:126, and 1:632.

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.

In response to a question by Co-Chair Lewis, Mr. Bowman stated that Dream.org supported 907 KAR 1:038, 1:126, and 1:632. These programs were important for communities and especially vital for people who were in recovery.

In response to a question by Co-Chair Lewis, Ms. Perkins stated that Safe Harbor Kentucky supported these administrative regulations, which were part of the support system for domestic violence survivors. It was difficult to escape domestic violence situations without a strong community support system.

In response to questions by Senator Thayer, Ms. Perkins stated that these programs were necessary to help people break the cycle of domestic violence and dependence. Good health was a part of obtaining employment. In her experience, most Medicaid recipients worked part time. If recipients transitioned to full-time employment, they lost Medicaid benefits.

In response to a question by Representative Frazier Gordon, Ms. Perkins stated that, in addition to Medicaid, she also relied on Vocational Rehabilitation, which had work requirements. Senator Thayer stated that he appreciated the work Ms. Perkins did to help domestic violence survivors. However, Kentucky was investing a significant amount in Medicaid at a time when the Commonwealth was experiencing a low workplace participation rate.

Senator Yates stated that abled-bodied people should participate in the workforce, and participation required providing for basic needs like vision, dental, and hearing. In response, Ms.

Perkins stated that she recently encountered a cancer patient who was unable to begin chemotherapy because of abscessed teeth. Because Medicaid reimbursement rates were so low, the dental care and the chemotherapy were delayed due to difficulty finding a Medicaid-participating dental provider.

In response to a question by Co-Chair Lewis, Ms. Schuster stated that the Kentucky Mental Health Coalition supported these administrative regulations because Medicaid recipients needed integrated health services. Conditions related to vision and hearing had safety implications. Conditions pertaining to vision, dental, and hearing also contributed to other significant health problems, which were often costly. Dental pain was linked with opioid addiction. Unresolved medical conditions also created obstacles to workforce readiness. Ms. Schuster referenced a letter of support from the Mackenzie Wallace, director of public policy with the Alzheimer's Association.

Senator Thayer stated that Representative Kimberly Poore Moser informed him that the General Assembly was working toward addressing the Medicaid benefits cliff, which ended benefits abruptly if certain criteria were met. Legislators were working to develop a more transitional system to phase out benefits for those recipients leaving the program. Vocational Rehabilitation, which had work requirements, might be a vehicle to assist with the transition process.

In response to a question by Co-Chair Lewis, Ms. Whatley stated that the Kentucky Oral Health Coalition supported a permanent path for these programs. The coalition thanked the General Assembly for assisting with and understanding the importance of continuity of care for those who had already begun treatment under these administrative regulations. Providers had been reluctant to participate in the Medicaid program due to the tenuousness of these administrative regulations and because of low reimbursement rates.

In response to a question by Co-Chair Lewis, Dr. Yeoh stated that oral cancer patients often had deformities from treatment for which Medicaid previously did not reimburse. This expanded program was a step toward addressing those and many other types of situations. There was a shortage of providers, especially in rural areas, and many patients traveled long distances for care. Late treatment, which often had poorer outcomes, could be expensive because progressive conditions sometimes required surgery or hospitalization. Medicaid providers improved the economic conditions of their communities.

In response to a question by Senator Yates, Ms. Lee stated that the agency amendment proposed removing certain diagnostic service coverage limitations that were determined to be unnecessarily stringent.

Rep. Bridges stated that the Administrative Regulation Review Subcommittee was not the appropriate venue for considering this appropriation-related matter.

A motion was made and seconded to approve agency and suggested amendments for 907 KAR 1:025, 907 KAR 1:038, 907 KAR 1:126, and 907 KAR 1:632. The motion failed.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 003:020. Financial requirements. Laura Begin, regulation coordinator, and Amandeep Burns, division supervisor, represented the department.

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

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the September 12, 2023, subcommittee agenda:

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**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.

PERSONNEL BOARD

101 KAR 001:365E. Appeal and hearing procedures.

KENTUCKY COMMISSION ON 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.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:020. Examination.

201 KAR 002:050. Licenses and permits; fees.

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 Nursing

201 KAR 020:700. Medication aide training programs and
credentialing of medication aides.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish
and Wildlife Resources: Fish**

301 KAR 001:122. Importation, possession, and prohibited
aquatic species.

DEPARTMENT OF AGRICULTURE: Livestock, Poultry, and Fish

302 KAR 022:150. Cervids.

**ENERGY AND ENVIRONMENT CABINET: Department for
Environmental Protection: Division for Air Quality: National
Ambient Air Quality Standards**

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.

Department of Juvenile Justice

505 KAR 001:010. Definitions.

505 KAR 001:100. Admissions.

505 KAR 001:110. Intake and orientation.

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.

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.

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: Kentucky Horse Racing
Commission: Sports Wagering: Licensing**

809 KAR 001:002E. Service provider licensing.

809 KAR 001:003E. Occupational licenses.

Sports Wagering: Technical Criteria

809 KAR 010:001E. General provisions.

809 KAR 010:002E. Standards for sports wagering.

809 KAR 010:003E. Technical requirements and oversight.

809 KAR 010:004E. Sports wagering accounts.

809 KAR 010:005E. Licensed premises.

809 KAR 010:006E. Audit and internal control standards.

809 KAR 010:007E. Responsible gaming and advertising.

809 KAR 010:008E. Disciplinary actions and hearings.

Horse Racing: General

810 KAR 002:100. Self-exclusion.

Horse Racing: Licensing

810 KAR 003:010E. Licensing of racing associations.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of
Inspector General: State Health Plan**

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review.

900 KAR 006:080. Certificate of Need emergency
circumstances.

Division of Health Care

902 KAR 020:300. Operation and services; nursing facilities.

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 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 2:15 p.m. The next meeting of
this subcommittee was tentatively scheduled for October 10,
2023, at 1 p.m.**

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 BANKING AND INSURANCE
Meeting of August 1, 2023

The Interim Joint Committee on Banking and Insurance met on August 1, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on May 3, 2023, pursuant to KRS 13A.290(6):

806 KAR 006:072
808 KAR 016:010

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

806 KAR 006:072
808 KAR 016:010

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 1, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 3, 2023

The Interim Joint Committee on Education met on August 1, 2023, and a quorum was present. The following administrative regulations were available for consideration as an effective regulation:

16 KAR 2:240E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

16 KAR 2:240E

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 1, 2023, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of September 21, 2023

The Interim Joint Committee on Natural Resources and Energy met on September 21, 2023, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on September 6, 2023, pursuant to KRS 13A.290(6):

301 KAR 011:020
301 KAR 006:020
301 KAR 006:001

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 21, 2023, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of September 26, 2023

The Interim Joint Committee on Local Government met on September 26, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 5, 2023 and September 6, 2023, pursuant to KRS 13A.290(6):

815 KAR 023:020

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815 KAR 010:060
815 KAR 007:130
739 KAR 002:060
109 KAR 017:010

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 26, 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

D - 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

D - 9

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

D - 15

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

D - 16

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

D - 17

A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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
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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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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 without Amendment
002 KAR 002:020	06-27-2023	Remain in Effect without Amendment
002 KAR 002:040	06-27-2023	Remain in Effect without Amendment
002 KAR 002:050	06-27-2023	Remain in Effect without Amendment
002 KAR 002:060	06-27-2023	Remain in Effect without Amendment
002 KAR 002:070	06-27-2023	Remain in Effect without Amendment
201 KAR 020:520	07-17-2023	Remain in Effect without Amendment
201 KAR 023:055	09-06-2023	To be amended, going through process now 09-06-2023
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 without Amendment
803 KAR 002:307	08-31-2023	Remain in Effect without Amendment
803 KAR 002:318	08-31-2023	Remain in Effect without Amendment
803 KAR 002:421	08-31-2023	Remain in Effect without Amendment
806 KAR 018:020	06-13-2023	Remain in Effect without Amendment
902 KAR 002:060	08-10-2023	Remain in Effect without Amendment
902 KAR 010:085	08-10-2023	Remain in Effect without Amendment
902 KAR 021:030	08-10-2023	Remain in Effect without Amendment
902 KAR 100:080	06-12-2023	Remain in Effect without Amendment
902 KAR 100:085	06-12-2023	Remain in Effect without Amendment
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

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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).

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