



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - **tentatively** scheduled to meet on December 11, 2023, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - **1242** [Online agenda is updated as needed](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	1245
ARRS Report.....	1445
Other Committee Reports	1449
Locator Index - Effective Dates.....	F – 2

KRS Index.....	F – 10
Certifications	F – 18
Technical Amendments	F – 19
Subject Index.....	F – 20

REPRINT

Horse Racing Commission

809 KAR 010:007E , Responsible gaming and advertising	1246
---	------

EMERGENCIES

NONE

AMENDED IN-PROCESS EMERGENCIES

NONE

AS AMENDED

State Board of Elections

031 KAR 004:196 , Consolidation of precincts and precinct election officers.....	1251
--	------

Board of Emergency Medical Services

202 KAR 007:550 , Required equipment and vehicle standards	1251
--	------

Department of Fish and Wildlife Resources

301 KAR 001:115 , Propagation of aquatic organisms	1256
301 KAR 001:125 , Transportation of fish	1258
301 KAR 002:083 , Holding and intrastate transportation of captive cervids	1259
301 KAR 002:172 , Deer hunting seasons, zone, and requirements	1262

Department of Agriculture

302 KAR 022:150 , Cervids	1264
---	------

Department of Justice

501 KAR 016:310 , Pre-execution medical actions	1271
---	------

Law Enforcement Council

503 KAR 001:140 , Peace officer, telecommunicator, and court security officer professional standards	1272
--	------

Department of Education

701 KAR 005:110 , Use of local monies to reduce unmet technology need.....	1278
702 KAR 003:340 , Approval of school district lease agreements	1279
702 KAR 007:125 , Pupil attendance	1279

Horse Racing Commission

810 KAR 004:001 , Definitions for 810 Chapter 4	1282
810 KAR 004:010 , Horses.....	1284
810 KAR 004:030 , Entries, subscriptions, and declarations	1286
810 KAR 004:040 , Running of the race	1288

AMENDED AFTER COMMENTS

Board of Veterinary Examiners

201 KAR 016:510 , Fees for veterinarians	1291
201 KAR 016:512 , Fees for veterinary technicians	1294
201 KAR 016:514 , Fees for animal control agencies and animal euthanasia specialists	1297
201 KAR 016:516 , Fees – other fees.....	1299
201 KAR 016:550 , Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.....	1301
201 KAR 016:552 , Responsibilities for certified animal control agencies; limitations on drugs	1304
201 KAR 016:560 , Certification as an animal euthanasia specialist	1307
201 KAR 016:701 , Standards for medical records	1309
201 KAR 016:702 , Standards for veterinary surgery	1312
201 KAR 016:750 , Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.....	1314

Horse Racing Commission

809 KAR 001:002 , Service provider licensing.....	1317
809 KAR 001:003 , Occupational licenses	1320
809 KAR 010:001 , General provisions.....	1324
809 KAR 010:002 , Standards for sports wagering	1327
809 KAR 010:003 , Technical requirements and oversight.....	1332
809 KAR 010:004 , Sports wagering accounts.....	1335
809 KAR 010:005 , Licensed premises.....	1340
809 KAR 010:006 , Audit and internal control standards	1346
809 KAR 010:007 , Responsible gaming and advertising	1352

Department for Medicaid Services	
907 KAR 003:310 . Community health worker services and reimbursement	1354
Department for Behavioral Health, Developmental and Intellectual Disabilities	
908 KAR 002:300 . Kentucky problem gambling assistance account	1357

PROPOSED AMENDMENTS

State Board of Accountancy	
201 KAR 001:190 . Examination sections, applications, and procedures	1360
Board of Nursing	
201 KAR 020:225 . Reinstatement of license	1363
Department of Fish and Wildlife Resources	
301 KAR 005:001 . Definitions for 301 Chapter 005	1365
301 KAR 005:010 . License agent applications and agreements	1367
301 KAR 005:020 . License agent requirements and responsibilities	1368
301 KAR 005:200 . Special commission permits for incorporated nonprofit wildlife conservation organizations	1371
Horse Racing Commission	
810 KAR 004:070 . Jockeys and apprentices	1374
Office of Data Analytics	
900 KAR 007:030 . Data reporting by health care providers	1379
900 KAR 007:040 . Release of public data sets for health facility and services data	1382
Office of Inspector General	
902 KAR 020:048 . Operation and services; nursing homes	1385
902 KAR 020:086 . Operation and services; intermediate care facilities for individuals with intellectual disabilities	1396
Department for Medicaid Services	
907 KAR 001:044 . Coverage provisions and requirements regarding community mental health center behavioral health services	1409
907 KAR 001:061 . Payments for ambulance transportation	1414
907 KAR 003:066 . Nonemergency medical transportation waiver services and payments	1417
907 KAR 015:005 . Definitions for 907 KAR Chapter 015	1419
Department for Community Based Services	
922 KAR 002:100 . Certification of family child-care homes	1423
922 KAR 002:165 . Employee Child Care Assistance Partnership	1433

NEW ADMINISTRATIVE REGULATIONS

Department of Fish and Wildlife Resources	
301 KAR 004:021 . Repeal of 301 KAR 004:020 and 301 KAR 004:050	1437
Department of Agriculture	
302 KAR 002:010 . Access to public records of the Kentucky Department of Agriculture	1438
302 KAR 016:150 . Qualification and registration of persons designated to perform amusement safety inspections	1440
Department for Behavioral Health, Developmental and Intellectual Disabilities	
908 KAR 001:410 . Recovery housing	1441

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, December 11, 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

Teacher Scholarship Loan Program

011 KAR 008:030. Teacher scholarships.

OFFICE OF THE GOVERNOR

Department of Veterans' Affairs

Veterans' Programs

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures.

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures.

PERSONNEL CABINET

Office of the Secretary

Personnel Cabinet, Classified

101 KAR 002:210E. 2023 and 2024 Plan Year Handbooks for the Public Employee Health Insurance Program. (Filed with Ordinary) ("E" expires 06-11-2024) (Deferred from November)

101 KAR 002:210. 2024 Plan Year Handbook for the Public Employee Health Insurance Program. (Filed with Emergency)

KENTUCKY COMMISSION ON HUMAN RIGHTS

Human Rights

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)

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 Pensions Authority

General Rules

105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities. (Filed with Ordinary) ("E" expires 07-07-2024)

BOARDS AND COMMISSIONS

Board of Optometric Examiners

201 KAR 005:005. Fees, fines, and forms.

Board of Veterinary Examiners

201 KAR 016:510. Fees for veterinarians. (Comments Received; SOC due 11-15-2023)

201 KAR 016:512. Fees for veterinary technicians. (Comments Received; SOC due 11-15-2023)

201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists. (Comments Received; SOC due 11-15-2023)

201 KAR 016:516. Fees – other fees. (Comments Received; SOC due 11-15-2023)

201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:560. Certification as an animal euthanasia specialist. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:701. Standards for medical records. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:702. Standards for veterinary surgery. (Comments Received; SOC ext. due 11-15-2023)

201 KAR 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements. (Comments Received; SOC ext. due 11-15-2023)

Board of Nursing

201 KAR 020:056. Advanced practice registered nurse licensure and certification requirements.

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 02:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder.

201 KAR 020:067. Professional standards for medicinal cannabis.

VOLUME 50, NUMBER 6– DECEMBER 1, 2023

201 KAR 020:215. Continuing competency requirements.
201 KAR 020:220. Nursing continuing education provider approval.

Board of Physical Therapy

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Social Work

201 KAR 023:055. Inactive status of license. (Comments Received; SOC ext. due 11-15-2023)
201 KAR 023:160. Temporary permission to practice. (Filed with Emergency) (Not Amended After Comments) (Deferred from November)
201 KAR 023:170. Telehealth and social work practice. (Comments Received; SOC ext. due 11-15-2023)

Board of Licensed Professional Counselors

201 KAR 036:005. Definitions for 201 KAR Chapter 036.
201 KAR 036:030. Continuing education requirements.
201 KAR 036:040. Code of ethics.
201 KAR 036:045. Distance counseling.
201 KAR 036:050. Complaint management process.
201 KAR 036:060. Qualifying experience under supervision.
201 KAR 036:065. Licensed professional clinical counselor supervisor.
201 KAR 036:070. Application, education, and examination requirements.
201 KAR 036:072. Reciprocity requirements for applicants licensed or certified in another state.
201 KAR 036:075. Renewal, late renewal, and reinstatement of license.
201 KAR 036:090. Administrative hearings for denials and revocation of probated sanction.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Underground Storage Tanks

401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement. (Comments Received; SOC due 11-15-2023)

Special Waste

401 KAR 045:010. Definitions for 401 KAR Chapter 045.
401 KAR 045:020. Types of special waste permits.
401 KAR 045:025. Permit review and determination timetables.
401 KAR 045:030. Obtaining a special waste site or facility permit.
401 KAR 045:040. Modification, transfer or revocation of special waste permits.
401 KAR 045:050. Public information procedures for special waste site or facility permits.
401 KAR 045:080. Financial requirements and bonds for special waste facilities.
401 KAR 045:100. Landfarming and composting of special waste.
401 KAR 045:105. Land application of biosolids.
401 KAR 045:140. Conditions applicable to all special waste permits.
401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.
401 KAR 042:250. Special waste permit fees.

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:590. Annual report on providers prescribing medication for addiction treatment.

Department of Financial Institutions

Securities

808 KAR 010:501. 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.

Kentucky Horse Racing Commission

Sports Wagering

809 KAR 001:002. Service provider licensing. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 001:003. Occupational licenses. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

Sports Wagering: Technical Criteria

809 KAR 010:001. General provisions. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:002. Standards for sports wagering. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:003. Technical requirements and oversight. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:004. Sports wagering accounts. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:005. Licensed premises. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:006. Audit and internal control standards. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:007. Responsible gaming and advertising. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)
809 KAR 010:008. Disciplinary actions and hearings. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

Horse Racing: General

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

Horse Racing: Licensing

810 KAR 003:010. Licensing of racing associations. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2023)

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 non-substantive review. (Filed with Emergency) (Amended After Comments) (Deferred from August)

Department for Public Health

Maternal and Child Health

902 KAR 004:120. Health Access Nurturing Development Services (HANDS) Program.

Food and Cosmetics

902 KAR 045:065. Tattooing.

902 KAR 045:070. Body piercing and ear piercing.

Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

Department for Medicaid Services

Payment and Services

907 KAR 003:310. Community health worker services and reimbursement. (Filed with Emergency) (Comments Received, SOC ext. due 11-15-2023)

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 009:010E. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services. (Filed with Ordinary) ("E" expires 06-30-2024)

Department for Behavioral Health, Developmental and Intellectual Disabilities

Mental Health

908 KAR 002:300. Kentucky problem gambling assistance account. (Filed with Emergency) (Comments Received; SOC due 11-15-2023)

Department for Community Based Services

Child Welfare

922 KAR 1:520. Supplements to per diem rates.

Daycare

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

3. REGULATIONS REMOVED FROM DECEMBER'S AGENDA

BOARDS AND COMMISSIONS

Board of Nursing

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

**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.

REPRINT

NOTE: The version of 809 KAR 010:007E as published on page 375 in [August's Administrative Register of Kentucky](#) inadvertently contained additional language. The ordinary version was NOT identical to its accompanying emergency. Section 1(5) through (14) should have been omitted from 809 KAR 10:007E. The corrected version of this emergency regulation is being reprinted here in its entirety.

STATEMENT OF EMERGENCY
809 KAR 10:007E

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements. This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is not identical to this emergency administrative regulation. The emergency regulation allows sports wagering operators to conduct individualized self-exclusion programs; whereas, the ordinary regulation merges those individual self-exclusion programs into one that is administered by the Kentucky Horse Racing Commission.

ANDY BESHEAR, Governor
 RAY PERRY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)

809 KAR 10:007E. Responsible gaming and advertising.

EFFECTIVE: July 10, 2023

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(15), (16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." This administrative regulation establishes a self-exclusion list and responsible gaming programs for sports wagering participants.

Section 1. Self-Exclusion List.

(1) Each operator licensee shall develop a commission-approved self-exclusion list for individuals who self-identify as problem or compulsive gamblers.

(2) The commission shall consider at least the following factors in approving a self-exclusion list:

(a) The list shall include the names and other identifying information of the individuals who have self-excluded from sports wagering at a licensed premises and online via a licensee-specific Web site, mobile application, or by phone.

(b) Each licensee shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the licensed premises, online, or by phone.

(c) The notice shall be displayed at public entrances to the race and sports book location, and on the licensee's Web site or

mobile application.

(d) The notice shall include information about the consequences of self-exclusion.

(3) The notice and its placement locations shall be approved by the racing commission. In approving the notice, the commission shall consider the notice's visibility and any other relevant factors.

(4) Each licensee shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

Section 2. Responsible Gaming Program.

(1) A licensee shall develop and maintain a responsible gaming program that shall be approved by the racing commission pursuant to this section. The responsible gaming program shall require:

(a) Posting in a conspicuous place on the licensee's Web site or mobile application and in every licensed premises a sign that bears a toll-free number for a commission-approved organization that provides assistance to problem or compulsive gamblers;

(b) Providing commission-approved disclosures on the licensee's Web site or mobile application and informational leaflets or other similar materials at the licensed premises containing information on the dangers associated with problem gambling;

(c) Providing patrons expressing concern with a gambling problem with information on commission-approved organizations that provide assistance to problem or compulsive gamblers;

(d) Providing notification that underage gambling is a criminal offense and that anyone who facilitates an underage person to place a sports wager has committed a criminal offense; and

(e) Ensuring that any request by a patron who wishes to self-exclude from sports wagering is honored by the licensee.

(2) In approving the organizations and disclosures listed in the previous subsection, the commission shall consider industry standards for responsible gambling and any other relevant factors.

(3) At least every (5) years, the licensee shall ensure that the licensee's responsible gaming program is independently reviewed by a third party, pursuant to industry standards and performed by a third party approved by the racing commission. The racing commission may require the licensee to pay for the independent review.

Section 3. Advertising and Marketing.

(1) A licensee shall not allow, conduct, or participate in any false or misleading advertising or marketing concerning the licensee's sports wagering operations.

(2) A licensee shall only make representations concerning winnings that are accurate, not misleading, and capable of substantiation at the time of the representation. For purposes of this subsection, an advertisement shall be misleading if the advertisement makes representations about average winnings without equally prominently representing the average net winnings of all patrons.

(3) A licensee shall not advertise or market at elementary, middle, or high school activities. The prohibition in this subsection shall exclude an advertisement distributed via mass media, such as television, radio, print media, or the Internet, if the advertisement is not specifically directed toward (but may be incidentally received by) elementary, middle, or high schools.

JONATHAN RABINOWITZ, Commission Chair
 RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 p.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 and maintains a voluntary self-exclusion list, requires tracks and/or their service providers to provide a commission-approved responsible gaming program, and precludes false or misleading advertising.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning responsible gaming and advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct 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 statutes by ensuring that sports wagering providers establish a voluntary self-exclusion list for problem or compulsive gamblers. It also ensures that providers maintain a responsible gaming program. Finally, this regulation ensures that sports wagering providers avoid engaging in false or misleading advertising practices.

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

(a) How the amendment will change this existing administrative regulation: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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 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 be impacted by the voluntary self-exclusion list and responsible gaming program. Finally, there is an unknown number of Kentuckians who will be impacted by the ban on false or misleading sports wagering advertising.

(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 offering sports wagering and service providers must establish a self-exclusion program and a commission-approved responsible gaming program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tracks will benefit from having clear standards for their voluntary self-exclusion and responsible gaming programs. Patrons will benefit from being able to take advantage of self-exclusion and responsible gaming programs. Kentuckians will benefit from the avoidance of false or misleading advertising.

(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(15) and (16) 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 administrative regulation will not generate cost savings for the first year.

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

(c) How much will it cost the regulated entities for the first year? Costs for the first year are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(d) How much will it cost the regulated entities for subsequent years? Costs for subsequent years are unknown, but should be minimal. Kentucky's licensed tracks already have individualized

self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

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 (+/-): Minimal, as set forth above in (4)(c) and (d).

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.

VOLUME 50, NUMBER 6– DECEMBER 1, 2023

EMERGENCY ADMINISTRATIVE REGULATIONS

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

NONE

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

STATE BOARD OF ELECTIONS
(As Amended at ARRS, November 9, 2023)

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

RELATES TO: KRS 117.066, 118.710, 118.720, 118.730

STATUTORY AUTHORITY: KRS 117.015(1)(a)

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

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

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

Section 3. Incorporated by Reference.

(1) "Petition to Consolidate Precincts and Precinct Election Officers", Form SBE 74, 08/2023[04/2022], is incorporated by reference.

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

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

CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, November 9, 2023)

202 KAR 7:550. Required equipment and vehicle standards.

RELATES TO: KRS 13B, 311A.030, 311A.180, 311A.190, 29 C.F.R. 1910.135

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 emergency medical services 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 the required equipment to operate an ambulance service.

Section 1. Ground Ambulance Specifications.

(1) Ground ambulances utilized by Class I, II, III, and IV agencies shall:

(a) Have the name of the provider permanently affixed by paint, decal, or wrap on both sides of the exterior surface of the vehicle.

1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license.

2. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is larger, and visible and legible by the public.

3. A vehicle operated by an agency shall not be marked with the words "advanced life support", "paramedic," or similar words that convey essentially the same meaning on the vehicle's exterior surface visible to the public unless the:

a. Vehicle is always staffed at an Advanced Life Support level; or

b. Agency was licensed by the board prior to January 1, 2018.

(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic.

(c) Be designed to provide for the medical care or transportation of patients.

(d) Stow all equipment weighing three (3) pounds or more in an enclosure, bracket, mount, or other appropriate securing device.

(e) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle.

1. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire.

2. Retread tires shall not be used on ground vehicles.

3. Internal patches may be utilized for tire repairs if necessary.

4. More than two (2) patches shall not be used on any one (1) defective tire.

5. Plugs shall not be used for the repair of defective ambulance tires.

(2) All Class I, II, III, and IV ground ambulances shall meet or exceed the minimum physical characteristics established in paragraphs (a) through (d)[(e)] of this subsection.

~~[(a) A ground ambulance licensed in Kentucky shall be affixed with an official Kentucky Board of Emergency Medical Services decal that states, at a minimum, the month and year of inspection.]~~

~~[(a)][(b)] An ambulance manufactured prior to January 1, 2019 shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on the original date of manufacture.~~

~~[(b)][(c)] [The agency shall require,] For a unit in which the chassis of an ambulance is later replaced, the agency shall require the conversion company to supply a letter to verify that no modification exists that was contained in GSA KKK-A-1822 on the~~

original date of module manufacture.

(c)(d) A new production ground ambulance that is ordered after January 1, 2019 shall comply fully with the ambulance design criteria contained in the Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), 7/2022[7/2046]. A decal or letter of verification from the manufacturer certifying that the vehicle meets the GVS standard, if ordered after January 1, 2019, shall be made available upon inspection.

(d)(e) ~~[The agency shall require]~~For any GVS certified vehicle~~;~~ in which the chassis of an ambulance is later replaced, the agency shall require the conversion company to[shall] supply a letter to verify that no modification exists that was contained in the GVS standard on the original date of module manufacture.

(3) In addition to the GSA KKK-A-1822 or the GVS standards, additional requirements shall be met as established in paragraphs (a) through (d) of this subsection.

(a) The air-conditioning system shall minimally deliver a temperature of sixty-five (65) degrees Fahrenheit or less from the vent or vents in the driver and patient compartments in warm weather conditions as determined by a standard automotive testing thermometer.

(b) The heating system shall minimally deliver a temperature of eighty-five (85) degrees Fahrenheit or more from the vent or vents in the driver and patient compartments in cool weather conditions as determined by a standard automotive testing thermometer.

(c) There shall not be ~~[no]~~ more patients, personnel, and other persons than can be safely secured by means of permanently installed safety belts in the vehicle while the vehicle is in motion.

(d) The patient care area lighting shall be fully functional.

(4) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(5) Documentation shall be maintained by the agency to support evidence of periodic inspections as recommended by the manufacturer, including calibrations required for maintenance and operation of the vehicle and its equipment.

(6) Unless precluded by emergency conditions, each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition~~;~~ ~~unless precluded by emergency conditions~~.

(7) (a) Except as established in paragraph (b) of this subsection, all linen used for patient care including sheets, blankets, pillowcases, pillows, towels, and washcloths shall be stowed in a separate cabinet and secured from body fluids.

(b) One (1) pillow, one (1) pillow-case, one (1) fitted sheet, two (2) flat sheets, one (1) towel, and two (2) blankets may be utilized on the stretcher that is in-service and shall not require stowing.

Section 2. Class I, II, and IV Basic Life Support Ambulance Equipment and Supplies.

(1) Each BLS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class I, II, and IV BLS agency shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;
2. Rigid catheters;
3. Flexible catheters in adult, pediatric, and infant sizes;
4. Bulb syringe for infant and neonate suction;
5. Disposable adult and pediatric bag-valve-mask with a pediatric pop-off valve with oxygen reservoir, oxygen tubing, and adult, pediatric, infant, and neonate masks;
6. Nasopharyngeal airways (16F-34F; adult and child sizes) with water-soluble lubricant;
7. Oropharyngeal airways (sizes 0-5; adult, child, and infant

sizes);

8. Blind-Insertion Airway Device (BIAD) (adult and pediatric); and

9. Manual pediatric and adult regular and large sphygmomanometer cuffs with stethoscope~~;~~~~;~~

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;
2. Two (2) portable, adequately filled, secured oxygen tanks that are minimally size D;

3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute; and

4. Transparent non-rebreather oxygen masks and nasal cannulas for adults and pediatrics~~;~~~~;~~

(c) Bandages, bandaging supplies, and tape, including:

1. ~~Commercially packaged or sterile burn sheets;~~
- 1.~~2.~~ Triangular bandages;
- 2.~~3.~~ Dressings of the following types:
 - a. Sterile dressings, including gauze sponges of suitable size;

and

b. Abdominal dressings;

3.~~4.~~ Gauze rolls, various sizes;

4.~~5.~~ Occlusive dressing, or equivalent;

5.~~6.~~ Adhesive tape of various sizes (including[include] one (1) inch and two (2) inch);

6.~~7.~~ A minimum of four (4) arterial~~[Arterial]~~ tourniquets; and

7.~~8.~~ Shears for bandages~~;~~~~;~~

(d) Miscellaneous supplies, including:

1. ~~Handheld[Hand-held]~~ flashlight capable of providing adequate lighting to assess a scene or a patient away from the vehicle;

2. Penlight;

3. A copy or electronic equivalent of the most recent version of the[2046] U.S. Department of Transportation, Emergency Response Guidebook;

4. A minimum of ten (10) triage tags consistent with a commercial system of triage[START-System-of-Triage];

5. Obstetrical supplies that shall include at a minimum:

- a. Sterile scalpels or scissors;
- b. Sterile gloves;
- c. Bulb suction;
- d. Two (2) umbilical clamps; and
- e. Thermal absorbent blanket and head cover, aluminum foil roll, or appropriate heat-reflective material sufficient[, e.g., enough] to cover a newborn infant;

6. Sterile irrigation fluids;

7. Glucometer or blood glucose measuring device with reagent strips and lancets for obtaining a blood glucose sample;

8. Oral glucose;

9. Cold packs;

10. Heat packs;

11. An AED with a minimum of two (2) complete sets of pads suitable for adult and pediatric populations for all non-ALS vehicles;

12. Pulse oximeter with pediatric and adult probes;

13. ~~[A]~~length-based resuscitation tape or a ~~[Reference material or a guide that shall be assigned to the ambulance and may be in an electronic or physical format that provides appropriate guidance for pediatric drug dosing and equipment sizing based on age, length, or weight;~~

~~[a. The reference material or guide shall be assigned to the ambulance; and~~

~~b. The reference material or guide may be in an electronic or physical format.]~~

(e) Splints, including:

1. Lower extremity mechanical traction splint in adult and pediatric sizes; and

2. Upper and lower extremity rigid splint devices for adult and pediatric patients;

(f) Immobilization devices, including:

1. ~~Short extrication and immobilization device;~~

1.~~2.~~ One (1) adult~~[Adult]~~ and one (1) pediatric impervious long spine board~~[boards]~~, scoop stretcher, or other full body device that provides spinal protection[immobilization devices] with a minimum of three (3) appropriate restraint cross-straps;

2.[3.] Cervical collars in the following sizes:

a.(i) Cervical collars for pediatric patients ages two (2) years or older; and

(ii) Cervical collars for adults in small, medium, large, and other available sizes; or

b. Pediatric and adult adjustable cervical collars; and

3.[4.] Towel rolls or other commercially available cervical immobilization devices for adults and pediatrics;

(g) Two (2) currently certified five (5) pound size or larger, secured, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance;

(h) Multi-position stretcher with wheels and a minimum of three (3) cross-straps in addition to one (1) set of shoulder straps for securing the patient to the stretcher and a fixed mechanism to secure the stretcher while in transit;

(i) Until January 1, 2025, a[A] pediatric transport device with a minimum weight range of ten (10) to forty (40) pounds;[and]

(j) On and after January 1, 2025, a pediatric transport device with a minimum weight range of five (5) to ninety-nine (99) pounds; and

(k)[(j)] A stair chair for the movement of patients in a seated position.

(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:

(a) One (1) clean scrub gown (or substitute, such as disposable coveralls);

(b) Simple disposable face mask;

(c) Clear protective goggles or safety glasses;

(d) Disposable gloves;

(e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

(f) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

(g) A means of cleansing the hands, such as disposable towelettes[towellettes] or other solutions.

(4) Cleaning materials shall be available including:

(a) Hospital grade disinfectants;

(b) Trash bags for disposal of nonbiohazard waste materials;

(c) Biohazard bags for the disposal of biohazard waste; and

(d) Puncture resistant containers for disposal of sharp objects that are secured to the vehicle.

(5) Patient comfort items shall be available including:

(a) Two (2) clean blankets, sheets, pillows, and pillowcases;

(b) A disposable urinal;

(c) A disposable bed pan; and

(d) An emesis container or similar substitute.

(6) All items with an expiration date shall not be expired.

Section 3. Class I ALS, Class III ACC, Class III PSC, and Class IV Advanced Life Support Ambulance Equipment and Supplies.

(1) Each ALS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, each Class I ALS, Class III ACC, Class III PSC, and Class IV ALS vehicle shall maintain, in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle with extra batteries, bulbs, or blades if applicable;

2. At least four (4) laryngoscope[Laryngoscope] blades to allow intubation of patients in accordance with agency protocols, including a minimum of:[in the following sizes:]

a. 0-4, straight Miller; or[and]

b. 2-4, curved Macintosh;

3. Endotracheal tubes in the following sizes:

a. 2.5, 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5 cuffed or uncuffed; or

b. If intubation is not included in the agency's protocols for

pediatric patients, supraglottic airways in all available sizes per the manufacturer of the specific device chosen; and

c.[b.] 6.0, 6.5, 7.0, 7.5 and 8.0 cuffed;

4. Stylettes in adult and pediatric sizes;

5. 10-mL syringes;

6. Magill forceps in adult and pediatric sizes;

7. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

8. End-Tidal CO₂ detection capability (adult and pediatric);

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

10. Equipment necessary to perform emergency percutaneous cricothyrotomy;[and]

11. Disposable nebulizer; and

12. Continuous waveform capnography;

(b) A portable, battery-operated monitor defibrillator that:

1. Has a tape write-out or recorder, hands-free defibrillator pads, electrocardiogram monitoring leads, and electrodes for adults and pediatrics;

2. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

3. Has synchronized counter-shock capability for cardioversion;

4. Has a transcutaneous cardiac pacemaker, including adult and pediatric pads and cables; and

5. Has 12-Lead ECG capability if the vehicle is staffed to provide ALS services;

(c) Vascular Access supplies consisting of:

1. Isotonic crystalloid solutions;

2. Antiseptic solution (alcohol wipes and providone-iodine wipes);

3. Intravenous catheters, 14G-24G;

4. Long-large bore needles or angiocatheters (at least 3.25 inches in length for needle chest decompression in large patients);

5. Intraosseous needles or intraosseous devices appropriate for children and adults; and

6. Latex-free tourniquet;

(d) Needles of various sizes, including suitable sizes for intramuscular injections;

(e) Intravenous macrodrip and microdrip administrations sets; and

(f) Intravenous arm boards, adult and pediatric, or appropriate substitute.

(3) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle that is immediately accessible to personnel.

(5) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

(6) All items with expiration dates shall not be expired.

Section 4. Class III Adult Critical Care (ACC) Transport Equipment.

(1) Each Class III ACC agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation and the ALS equipment required in Section 3 of this administrative regulation, Class III Adult Critical Care agencies shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including at a minimum:

(a) A portable transport ventilator, the capabilities of which shall include:

1. Controlling rate;

2. Volume;

3. FiO₂ up to 100 percent;

4. I:E ratio;

5. PEEP;
6. Volume control;
7. Pressure control;
8. SIMV mode;
9. NPPV mode; and
10. Low- and high-pressure warning alarms;
- (b) Two (2) portable transport ventilator circuits appropriately sized for the patient being transported;
- (c) Continuous Positive Airway Pressure (CPAP) ventilation portable equipment;
- (d) Electronic waveform capnography, intubated patient, capable of waveform display;
- (e) Difficult airway equipment in the form of a bougie gum elastic ET introducer;
- (f) Sterile cricothyrotomy set, surgical or needle;
- (g) Invasive pressure monitoring capability electronic waveform available on two (2) channels;
- (h) An infusion pump or pumps capable of infusing three (3) separate medications simultaneously;
- (i) Six (6) IV infusion pump tubing sets;
- (j) Two (2) blood infusion sets; and
- (k) A device to monitor core body temperature through rectal or esophageal probe.

Section 5. Class III Pediatric Specialty Care (IIPSC) Transport Equipment.

- (1) Each Class III Pediatric Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) In addition to the BLS equipment required in Section 2 of this administrative regulation, the ALS equipment required in Section 3 of this administrative regulation, and the Critical Care equipment listed in Section 4 of this administrative regulation, each Class III Pediatric Specialty Care agency shall carry on each vehicle and maintain in fully operational order supplies and equipment required by the agency's protocols, including:
 - (a) Two (2) 250 ml bags of normal saline or lactated ringers;
 - (b) Twelve (12) syringes assorted from 1cc to 2cc;
 - (c) Four (4) three-way stopcocks;
 - (d) A needle cricothyrotomy kit for children from the ages of twenty-nine (29) days until twenty-one (21) years of age; and
 - (e) A blind-insertion airway device (BIAD) in appropriate sizes for children from the ages of twenty-nine (29) days until twenty-one (21) years of age.

Section 6. Class III Neonatal Specialty Care (III NSC) Transport Equipment.

- (1) Each Class III Neonatal Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) In addition to compliance with Section 1 of this administrative regulation, each Class III Neonatal Specialty Care agency shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including:
 - (a) Direct two-way communications with the designated neonatologist, attending physician, or receiving NICU;
 - (b) A standby or backup power source other than the one (1) contained in the isolette;
 - (c) A source of electrical power sufficient to operate the isolette and ancillary electrically powered equipment;
 - (d) A transport incubator with portable power supply, portable oxygen tanks, or liquid oxygen, and a source of compressed air, including appropriate valves, meters, and fittings. The transport incubator shall be secured in the vehicle using a manufacturer-approved vehicle-mounting device;
 - (e) One (1) portable heart rate monitor with visual or audible display and alarm system per patient;
 - (f) One (1) portable blood pressure monitor with an assortment of cuff sizes suitable for infants;

- (g) Three (3) battery powered mechanical IV pumps capable of delivering as low as 1cc increments for IV fluids;
- (h) A battery or self-powered oxygen sensor and transcutaneous oxygen monitor or oxygen saturation monitor;
- (i) Oxygen delivery devices and tubing capable of administering high concentrations of oxygen;
- (j) A temperature-monitoring device;
- (k) A portable ventilator appropriate for neonatal patients;
- (l) An anesthesia or self-inflating bag with an oxygen reservoir of less than 750 ml, a manometer pressure gauge, and premature newborn and infant size clear masks;
- (m) A laryngoscope handle;
- (n) Laryngoscope Blades in Miller sizes 00, 0, 1, 2, 3;
- (o) Two (2) bulbs;
- (p) Two (2) batteries;
- (q) Endotracheal tubes in various sizes;
- (r) Two (2) stylets;
- (s) Two (2) meconium aspirators;
- (t) Oral airways in various sizes;
- (u) Suction equipment with low suction capabilities of less than eighty (80) mmHg;
- (v) Two (2) suction catheters in sizes 5.0, 6, 6.5, 8, and 10 each;
- (w) Syringes sizes 1 cc through 60 cc in various sizes;
- (x) Two (2) medication access devices;
- (y) 23-27 gauge vascular access devices in various sizes;
- (z) Sterile gloves in various sizes and sufficient quantity for all crewmembers;
- (aa) Medications as required by the master drug list contained in protocols established in accordance with this section;
- (bb) IV extension tubing in sufficient length to administer IV fluids or medications;
- (cc) IV securing devices in various sizes;
- (dd) Two (2) IV filters;
- (ee) Two (2) umbilical catheters, sizes 3.5 and 5;
- (ff) Ten (10) antiseptic solution wipes;
- (gg) One (1) blood glucose-monitoring device;
- (hh) Five (5) lancets for obtaining a blood glucose sample;
- (ii) One (1) neonatal stethoscope;
- (jj) One (1) flashlight;
- (kk) Gauze pads;
- (ll) One (1) No. 5 and one (1) No. 8 French feeding tube;
- (mm) One (1) high intensity light capable of transillumination;
- (nn) A biomedical waste plastic bag or impervious container;
- (oo) Puncture resistant containers for disposal of sharp objects that shall be secured to the vehicle;
- (pp) Gloves made of nitrile or other suitable materials in sufficient quantity for all crewmembers;
- (qq) Respiratory face masks in sufficient quantity for all crew members;
- (rr) Special procedure trays or instruments capable of performing umbilical catheterization, venous cutdown, and thoracostomy in accordance with established protocol;
- (ss) One (1) bulb syringe;
- (tt) One (1) cord clamp;
- (uu) One (1) age appropriate chest tube evacuation device; and
- (vv) Needle aspiration device or chest tubes in appropriate sizes for a neonate patient.

Section 7. Class VI and Class VIII BLS Agency Equipment.

- (1) Each Class VI and VIII BLS agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) Each Class VI and VIII BLS agency shall be exempt from the ground ambulance requirements established in Sections 1 through 6 of this administrative regulation.
- (3) Each Class VI and VIII BLS agency shall provide ready access to and maintain in fully operational order all supplies and equipment required by the agency's protocols.
- (4) (a) Each Class VIII BLS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this

administrative regulation.

(b) Each Class VI BLS agencies shall be required to maintain one (1) complete set of equipment.

(5) Each basic life support non-transport vehicle shall wrap, properly store, and handle all single-service implements to be inserted into the patient's nose or mouth.

(6) Each Class VI and VIII BLS agency shall properly store and keep multiuse items clean and sterile if indicated.

(7) Each Class VI and VIII BLS agency shall carry the following assembled and readily accessible equipment:

(a) Respiratory and resuscitation equipment, including:

1. Portable suction apparatus, capable of a minimum vacuum of 300 millimeters mercury, equipped with two (2) each of the following:

- a. Wide-bore tubing;
- b. Rigid catheters;
- c. Soft pharyngeal suction tips in child size; and
- d. Soft pharyngeal suction tips in adult size;

2. One (1) hand-operated bag-mask ventilation unit equipped with clear facemasks and oxygen reservoirs with oxygen tubing in each of the following sizes:

- a. Adult;
- b. Child;
- c. Infant; and
- d. Neonatal mask only;

3. Two (2) oropharyngeal airways in each of the following sizes:

- a. Adult;
- b. Child; and
- c. Infant;

[4. One (1) pocket mask with a one (1) way valve;]

4.[5.] Blind-Insertion Airway Devices (BIAD) in adult and pediatric sizes; and

5.[6.] Portable oxygen equipment of at least 300 liters capacity and D size cylinder with a regulator capable of delivering 25LPM;

(b) Oxygen delivery devices, including:

1. Two (2) non-rebreathing oxygen masks in both adult and pediatric sizes;

2. Two (2) nasal cannula in both adult and pediatric sizes;

3. Two (2) nasopharyngeal airways with water-soluble lubricant in each of the following sizes:

- a. Adult;
- b. Child; and
- c. Infant;

(c) Wound care supplies, including:

1. Two (2) airtight dressings for open chest wounds;

2. Assorted bandaging supplies for the care of soft tissue injuries; and

3. Sterile water for irrigation;

(d) An AED with a minimum of two (2) complete sets of pads for all non-ALS providers and vehicles;

(e) Patient stabilization equipment, including:

1. Two (2) upper and two (2) lower extremity-splinting devices; and

2. Two (2) cervical collars in each of the following sizes or adjustable equivalents:

- a. Pediatric;
- b. Small;
- c. Medium;
- d. Large; and
- e. No-Neck;

(f) Personal protection and body substance isolation equipment, including at least one (1) of each of the following for each EMS provider:

- 1. Gown;
- 2. Face mask and shield;
- 3. Gloves;
- 4. Biohazard bag;
- 5. Puncture resistant container for the disposal of sharp objects;

and

6. Antimicrobial hand cleaner; and

(g) Miscellaneous items, including:

- 1. Obstetrical supplies, including:
 - a. Sterile scalpels or scissors;
 - b. Sterile gloves;

c. Bulb suction; and

d. Two (2) umbilical clamps;

2. One (1) blood pressure sphygmomanometer in each of the following cuff sizes:

- a. Large adult;
- b. Adult; and
- c. Pediatric;

3. One (1) stethoscope in each of the following sizes:

- a. Adult; and
- b. Pediatric; and

4. A glucometer or blood glucose-measuring device with reagent strips and lancets for obtaining a blood glucose sample.

Section 8. Class VI and VIII ALS Agency Equipment.

(1) Each Class VI and VIII ALS agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII ALS agency shall be exempt from the ambulance requirements established in Sections 1 through 6 of this administrative regulation.

(3) (a) Each Class VIII ALS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI ALS agency shall be required to maintain one (1) complete set of equipment.

(4) In addition to the BLS equipment required in Section 7 of this administrative regulation, each Class VI and VIII ALS agency shall provide ready access to and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. An end tidal carbon dioxide detection device;

7. Stylettes in adult and pediatric sizes;

8. Magill forceps in adult and pediatric sizes;

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with electrode pads or equivalent for use with the patient monitoring cable;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

- (f) Disposable, individually packaged antiseptic wipes;
- (g) Intravenous fluids as required by the agency's protocol, with macrodrip and microdrip fluid sets, and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;
- (h) Intraosseous needles or intraosseous devices appropriate for children and adults; and
- (i) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.
- (5) All items with expiration dates shall not be expired.
- (6) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.
- (7) Controlled drugs shall be stored in a locked storage box in a locked compartment that is immediately accessible to personnel.
- (8) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

Section 9. Safety Equipment.

- (1) Each ground agency licensed to respond to emergency pre-hospital responses shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance for each staff member:
 - (a) Eye protection goggles or safety glasses;
 - (b) Heavy work gloves;
 - (c) Hard hats that meet ANSI standards, as stated in 29 C.F.R. 1910.135;
 - (d) Reflective safety wear for each crew member that meet current ANSI standard ANSI 107-2010 or ANSI 207-2011; and
 - (e) Three (3) reflective triangles or strobes, or equivalent warning devices.
- (2) A ground ambulance agency subject to emergency pre-hospital response not equipped to provide extrication and rescue services shall execute an agreement with an agency capable of providing extrication and rescue services to the primary geographic service area.
- (3) Each Class II, III ACC, III PSC, III NSC, and VIII agency shall be exempt from the requirements of this section unless emergency pre-hospital response is included in the agency's scope of care.

Section 10. Equipment or Medication Waiver.

- (1) The board for good cause shall grant a waiver of any section of this administrative regulation upon request. An applicant for waiver shall submit ~~an~~:
 - (a) An "EMS Equipment or Staff Waiver Request"; and
 - (b) A nonrefundable application fee of \$500 per waiver request.
- (2) The application request shall include:
 - (a) Evidence of prior good faith efforts to comply with each section for which a waiver is requested;
 - (b) A written explanation of the agency's inability to comply with each section for which a waiver is requested, including any financial or other significant hardship resulting from the agency's efforts to comply;
 - (c) A written plan for providing adequate care to patients;
 - (d) The length of time for which the waiver is requested; and
 - (e) A plan for compliance with each section of this administrative regulation for which a waiver has been requested.
- (3) Requests for waivers shall be submitted to the executive director of the board.
- (4) The administrator and medical director of the agency requesting a waiver shall appear before the board's executive committee and the full board at a regularly scheduled meeting to present evidence of hardship that compliance with this administrative regulation may/will cause.
- (5) Waivers shall not be issued for minimum staffing requirements.
- (6) Any waiver issued by the board shall expire on December 31 of the year of issue.
- (7) Within twenty (20) days of the board's decision, the executive director shall notify the applicant of the decision in writing.
- (8) A waiver approved by the board upon a finding of good cause

shall be considered a fulfillment of the licensing requirements established in the waiver through December 31 of the year of issue.

(9) The board shall deny the waiver request if, after reviewing the application, it is determined that if the waiver is granted the:

- (a) Agency is no longer able to meet the needs of the agency's patients or geographic service area; or
- (b) Health or safety of the agency's patients or geographic service area may be jeopardized.

(10) An applicant whose request for waiver is denied may file a written request for a hearing before the board within thirty (30) days of the written notice of denial.

(11) A hearing shall be conducted in accordance with KRS Chapter 13B.

Section 11. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 12. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "EMS Equipment or Staff Waiver Request", (12/2017), <http://kemsis.ky.gov/>;
 - (b) "U.S. Department of Transportation, Emergency Response Guidebook", (2020), www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-01/ERG2020-07/Federal%20Specification%20for%20the%20Star-of-Life%20Ambulance.pdf[(2016)];
 - (c) "Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)", (7/2022), www.groundvehiclestandard.org/wp-content/uploads/2022/06/CAAS_GVS_V3_Final_07_01_2022_2.pdf[(7/2016)]; and
 - (d) "U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822F)", (8/2007), www.ehsf.org/sites/default/files/2017-07/Federal%20Specification%20for%20the%20Star-of-Life%20Ambulance.pdf.

(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.

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, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, November 9, 2023)

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO: KRS 13B, 150.290, 150.485
STATUTORY AUTHORITY: KRS 150.025, 150.180(2), 150.280, 150.450, 50 C.F.R. 17.11

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife; the restriction off, restrict the places where taking is permitted; and the application off to make administrative regulations apply to a limited area or to the entire state. KRS 150.180(2) authorizes the department to promulgate administrative regulations regarding the buying, selling, and transporting of mussels and fishes by licensed fish propagation permit holders. KRS 150.280 requires the department to promulgate administrative regulations governing the propagation or holding of protected wildlife. KRS 150.450 requires the department to promulgate reasonable administrative regulations governing the taking of minnows and crayfish from the waters of the

Commonwealth. 50 C.F.R. 17.11 establishes federally threatened and endangered fish species. This administrative regulation establishes the requirements for obtaining a propagation permit for aquatic organisms and establishes the requirements for propagation permit holders.

Section 1. [Definitions.

(1) "Aquatic organisms" means fishes, frogs, crayfish, and other aquatic vertebrates and invertebrates.

(2) "Live bait fishes" means:

- (a) Rough fishes, except Asian carp and federally threatened or endangered species as established in 50 C.F.R. 17.11; or
- (b) Redear sunfish less than six (6) inches in length.
- (3) "Permit" means a fisheries commercial propagation permit.
- (4) "Water supply lake" means a lake that:
 - (a) Is owned by a municipality or other public water supply entity;
 - (b) Provides potable water supply for the public;
 - (c) Is not owned by the state; and
 - (d) Is not managed by the department.

Section 2. [Permit Requirements and Application Procedures.

(1) Before acquiring or propagating aquatic organisms, an individual, corporation, or other business entity~~[a person]~~ shall obtain a permit from the department by:

- (a) Completing the Fisheries Commercial Propagation Permit~~[an]~~ application provided by the department; and
- (b) Paying the permit fee as established in 301 KAR 5:022[3:022].

(2) The department shall issue a free permit to elementary, middle, and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.

Section 2. [Section 3.] Acquisition of Brood Stock from Public Waters.

(1) A permit holder may obtain from public waters a maximum of 1,500 live bait fishes or crayfish per surface acre of water used for propagation of a particular species.

(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both live bait fishes and crayfish.

(3) A conservation officer shall supervise the acquisition of brood stock from public waters.

(4) A permit holder shall use gear as established in 301 KAR 1:130 to acquire aquatic organisms from public waters.

(5) A permit holder may sell propagated aquatic organisms.

Section 3. [Section 4.] An individual, corporation, or other business entity~~[A person]~~ may request a permit for paddlefish to be stocked and reared in a water supply lake for aquaculture purposes as established in 301 KAR 1:110 by completing a permit application and submitting it to the department.

(1) A municipality may allow a permitted second party to rear paddlefish in a water supply lake.

(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the two (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.

(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.

(4) Paddlefish shall be the only species permitted to be stocked by the permit holder in a water supply lake.

(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Any additional stocking events shall require prior written approval from the Fisheries Division. A permit holder may request approval from the Fisheries Divisions by submitting a written request. Approval shall be granted for any single mortality event where ten (10) percent or more of fish from the initial stocking, calculated as fish per acre, are observed dead~~[approval by the commissioner]~~.

(6) The permit applicant shall list the name of each water supply lake on the permit application.

(7) A permit shall be obtained for every year of the paddlefish rearing period.

(8) The department shall not:

- ~~(a) enforce the protection of the stocked paddlefish;~~ **(a) enforce the protection of the stocked paddlefish;**
- ~~(b) Establish paddlefish sport fish administrative regulations in any of the water supply lakes].~~

(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.

(10) The department shall not be responsible for any corrective actions associated with fish populations in the water supply lakes used for aquaculture purposes.

(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in the water supply lake.

(12) A permit holder may use gill nets to take paddlefish only from the water supply lakes listed on the permit. A permit holder or a designated representative in possession of a valid copy of the permit shall be on site each time gill nets are used in the water supply lakes.

(a) The department shall be notified at least three (3) days in advance of any paddlefish harvest from a water supply lake, including the random sampling of the stocked paddlefish that require the use of gill nets.

(b) Gill nets shall only be used in a water supply lake from November 1 through March 31.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) A permit holder shall attach a metal tag provided by the department to each gill net used.

(e) Paddlefish shall be the only species of fish harvested, and any other species of fish captured shall be immediately released without undue injury.

Section 4. [Section 5.] Inspection of Facilities and Revocation or Denial of Permits.

(1) A permit holder shall allow a conservation officer to inspect his or her facilities.

(2) The department shall:

(a) Revoke the permit of an individual, corporation, or other business entity~~[a person]~~ who violates KRS Chapter 150[a statute] or 301 KAR Chapter 1[administrative regulation] pertaining to propagation of aquatic organisms;

(b) Deny a permit:

1. For an individual, corporation, or other business entity~~[a person]~~ who has violated KRS Chapter 150[any department statute] or 301 KAR Chapter 1[administrative regulation] within the last year; or~~[and]~~

2. For propagation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems; and

(c) Not renew the permit for a period of up to two (2) years of an individual, corporation, or other business entity~~[a person]~~ that has been found guilty of violating KRS Chapter 150[a statute] or 301 KAR Chapter 1[administrative regulation] pertaining to propagation of aquatic organisms.

(3) Fees paid for revoked permits shall not be refunded.

(4) An individual, corporation, or other business entity whose permit has been denied, revoked, or to whom a non-renewal period has been applied may request an administrative hearing pursuant to KRS Chapter 13B.

(5) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(6) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(7) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

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

(1) "Fisheries Commercial Propagation Permit Application", 2006 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 9, 2023)**

301 KAR 1:125. Transportation of fish.

RELATES TO: KRS 13B, 150.010, 150.170, 150.235, 150.485
STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180(6), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires the commissioner to promulgate administrative regulations relating to issuance of any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) requires~~[authorizes]~~ the department to promulgate~~[by]~~ administrative regulations identifying~~[regulation to identify]~~ species of wildlife that are potentially damaging to native ecosystems and prohibiting~~[to prohibit]~~ the transporting or holding of that wildlife. This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state to protect the resident fish population.

Section 1. [Definitions.]

(1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(3) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(4) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(5) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(6) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(7) "VHS-positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov as being positive for Viral Hemorrhagic Septicemia (VHS).

(8) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at www.aphis.usda.gov.

Section 2.] A Fish Transportation Permit shall not be required:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky;

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals transporting fish purchased from a licensed

live bait dealer or permitted commercial fish propagator for stocking in private waters;

(5) By agents of the department while performing their normal duties; or

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 2.~~[Section 3.]~~ Live Fish, Live Bait, or Other Aquatic Organisms.

(1)~~(a)~~ All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:001~~[4:132]~~, Section 1, or other live aquatic organism, except those individuals listed in Section 1~~[2]~~ of this administrative regulation shall have in possession the documents required by paragraph (b) of this subsection, if transporting~~;~~ into, within, or through Kentucky, ~~[shall have in possession a:]~~

~~(b)1.(a)]~~ A fish Transportation Permit, to be renewed annually by calendar year, issued in the name of the individual, corporation, or other business ~~[entity transacting the business; and]~~

2. A~~(b)]~~ bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms will be:

(a) Sold to another individual, corporation, or other business entity in Kentucky; or

(b) Transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free, and any prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any Viral Hemorrhagic Septicemia- or VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section, the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility:

1. The VHS-regulated fish species shall only be unloaded at a:

a. State inspected fish-processing plant; or

b. Research and diagnostic laboratory;

2. The individual shall possess a copy of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, or APHIS, VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes wastewater~~[waste—water]~~ disinfection or into a non-discharging~~[nondischarging]~~ settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky, then only the requirements established in subsections (1) and (3) of this section and Section 3~~[4]~~ of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 2~~[3]~~ and 3~~[4]~~ of this administrative regulation shall be confiscated for disposal purposes.

Section 3.~~[Section 4.]~~ Fish Transportation Permit Application.

(1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 5:022~~[3:022]~~.

(2) In addition to the requirements established in subsection (1) of this section,~~[If]~~ an individual, corporation, or other business entity that wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state ~~[, in addition to the requirements established in subsection (1) of this section they]~~ shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is certified as being

VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner, based on risk of contagion to fish of the Commonwealth, be sent an updated Fish Transportation Permit listing the approved facility.

Section 4.~~[Section 5.]~~ Transportation of Roe-Bearing Fish and Roe.

(1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section 8(4)(c)[4(4)(d)3].

Section 5.~~[Section 6.]~~ **The transporter shall not transport the prohibited species listed in 301 KAR 1:122, and all officers and agents of the department shall have the authority to demand that the transporter submit proof of all appropriate permits and documentation. [All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.]**

Section 6.~~[Section 7.]~~ Fish Transportation Permit Denial, Revocation, and Nonrenewal.

(1) The department shall deny a Fish Transportation Permit for transportation of aquatic organisms determined potentially damaging to Kentucky's native ecosystems.

(2) The department shall revoke and shall not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

~~(3)(2)~~ An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

~~(4)(3)~~ A request for a hearing shall be in writing and postmarked, or delivered in person to the department, no later than thirty (30) days after notification of the denial or revocation.

~~(5)(4)~~ Upon receipt of the request for a hearing, the department shall comply with/proceed according to the provisions of KRS Chapter 13B.

~~(6)(5)~~ The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 7.~~[Section 8.]~~ Incorporated by Reference.

(1) "Application for Fish Transportation Permit", 2023[2008] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601,

Monday through Friday, 8 a.m. to 4:30 p.m. or obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 9, 2023)

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.010~~(42)(41)~~, 150.290, 150.725, 150.740~~[-164.772]~~

STATUTORY AUTHORITY: KRS 150.025(1), 150.280, 150.720, 150.730, 150.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 requires[authorizes] the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 requires[authorizes] the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting of cervids in Kentucky.

Section 1. Definitions.

(1) "Approved laboratory" means:

(a) The National Veterinary Service Laboratory in Ames, Iowa; or

(b) Any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) "Captive cervid" means a cervid that is privately owned, born, and raised in captivity, and not considered wildlife as established in KRS 150.010.

(3) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(4) "Cervid" means a member of the family Cervidae.

(5) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(6) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(7) "Line post" means a post in a fence that is not a corner or end post.

(8) "Noncommercial captive cervid permit" means a permit issued prior to March 1, 2016 that allows a person to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements.

(1)

(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the fencing as established in this subsection and subsection (2) of this section.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)

(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)

(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) Crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are established in subparagraphs 1. through 4. of this paragraph:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural, or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height, or other measures to prevent escape.

(9) Maintenance. The fence shall continuously be maintained in a game-proof condition.

(10) A noncommercial captive cervid permit holder shall:

(a) Separate all adult males and females with fencing as

established in this section;

(b) Not allow breeding, either by natural or artificial insemination;

(c) Not introduce any additional captive cervids to the facility;

(d) Complete and submit to the department a Captive Cervid Annual Reporting Form by February 28 of each year;

(e) Report any cervid deaths to the department by telephone at 800-858-1549 within forty-eight (48) hours; and

(f) Submit tissue specimens of all captive cervids that die in the permit holder's facility to an approved laboratory for CWD testing.

Section 3. Capture and Handling Facilities.

(1) Except as established in subsection (2) of this section, each captive facility shall have a squeeze chute or crush that facilitates inspection, handling, or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities established in subsection (1) of this section, the alternative shall be a dart gun or tranquilizer that immobilizes the animal.

Section 4. Tagging.

(1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture's Chronic Wasting Disease program requirements established in 302 KAR [20:066]22:150.

(2) Except as established in subsection (3) of this section, captive cervids over six (6) months old shall be uniquely identified with a plastic flop tag in at least one (1) ear that is clearly visible and identifiable.

(3) Upon written request, the department shall approve one (1) of the alternatives for plastic flop tags established in paragraphs (a) through (c) of this subsection for bona fide zoos, nature centers, or similar educational institutions ~~[upon written request]~~.

(a) Lip or ear tattoo;

(b) Microchip; or

(c) Branding.

Section 5. Ingress and Egress.

(1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to the department by telephone at 1-800-858-1549.

(3) The permit holder shall send a written report to the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder shall report known ingress of wild cervids into the enclosure by sending a written report to the department at the same address established in subsection (3) of this section.

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements.

(1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the species established in subsections (1) through (4) of this section:

(1) Genus *Cervus* spp., except *Cervus elaphus nelsoni*;

(2) Genus *Axis* spp.;

(3) Roe deer (*Capreolus capreolus* and *Capreolus pygargus*); or

(4) Hybrids thereof.

Section 8. Captive Cervid Permits.

(1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance

with the provisions of KRS 150.730.

(2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as established in subsection (11) of this section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the department.

(3) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association shall not be required to obtain or renew a captive cervid permit, but facilities not accredited by the American Zoo and Aquarium Association shall be required to obtain and renew a captive cervid permit.

(4) A captive cervid permit shall be required for a facility owned or leased by a person wishing to hold captive cervids.

(5) A new noncommercial captive cervid permit shall not be issued to a facility after February 28, 2016.

(6) All wild cervids shall be removed from the facility prior to initial inspection.

(7) A permit shall identify the species and numbers of cervids being held.

(8) Duration.

(a) A captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February[,] and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February[,] and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(9) A holder of a noncommercial captive cervid permit prior to March 1, 2016, shall be allowed to hold captive cervids for the life of the animals, after which the permit shall not be valid.

(10) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility pursuant to KRS 150.735(3).

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (11) of this section.

(c) The purchaser or lessee of the facility shall:

1. Apply for transfer of the existing captive cervid permit on a department Captive Cervid Permit Transfer Application form;

2. Attach a copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer; and

3. Send all application materials to the department at #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a Captive Cervid Permit Application.

(e) A noncommercial captive cervid permit shall not be transferred.

(11) Inspections.

(a) Before a captive cervid permit or noncommercial captive cervid permit is issued, renewed, or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify the department to request an inspection that shall be conducted within thirty (30) days of receipt of the request.

(c) Each facility shall be inspected annually after issuance of a captive cervid permit or noncommercial captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.

(d) A Captive Cervid Facility Inspection Form shall be completed by a department law enforcement captain, who shall then forward the original copy to department headquarters for processing.

(12) Revocation or suspension.

(a) The department shall issue a notice of violation in the form of a certified letter to a person who is not in compliance with this administrative regulation, 302 KAR [20:066]22:150, or a Kentucky statute pertaining to the holding of captive cervids.

(b) The department shall suspend the permit of a person who has received a notice of violation until the person complies with this administrative regulation and applicable statutes.

(c) The department shall issue a citation to a person who has failed to comply with this administrative regulation or applicable statutes within sixty (60) days from the date of the notice of violation.

(d) If convicted of a violation of this administrative regulation, the department shall:

1. Revoke the permit; and

2. Seize the captive cervids.

(e) A person who has a captive cervid permit revoked or suspended shall not, without the written approval of the department:

1. Transfer or expand the facility; or

2. Sell, offer to sell, trade, transport, hunt, or slaughter captive cervids that are housed in that facility.

(13) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(14) Expansions.

(a) A facility may be expanded and shall conform to the fencing specifications established in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the department as established in subsection (11) of this section.

Section 9. Origin and Disposition of Captive Cervids.

(1) Cervids obtained from the wild shall only be held by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; and

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Intrastate Movement of Cervids.

(1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR [20:066]22:150.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in possession while transporting cervids.

Section 11. Selling Cervids. A permit holder who holds a captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Captive Cervid Permit Application", 2016 edition;

(b) "Captive Cervid Permit Transfer Application", 2016 edition;

(c) "Captive Cervid Facility Inspection Form", 2016 edition; and

(d) "Captive Cervid Annual Reporting Form", 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 9, 2023)**

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.170, 150.177, 150.180, 150.411(3), 150.990~~[(237.140)]~~

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area or the entire state. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 requires the department to promulgate administrative regulations relating to~~authorizes~~ the kinds of licenses and permits listed in the statute to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes deer hunting seasons and zones, bag limits, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions.

(1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide deer permit in the following combinations:

- (a) One (1) antlered deer and one (1) antlerless deer; or
- (b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(7) "Arrow" means the projectile fired from a bow or crossbow.

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(9) ~~["Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.~~

~~(10)] "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.~~

(10) "Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(11) "CWD Surveillance Zone" means an area designated as being subject to special deer hunting regulations due to a CWD positive cervid detection.

(12) "Deer" means a member of the species *Odocoileus virginianus*.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "KDSS" means the Kentucky Direct Sales System.

(15) "License year" means the period from March 1 through the last day of February.

~~(16) [(15)] "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.~~

~~(17) [(16)] "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.~~

~~(18) [(17)] "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10)~~

years.

~~(19) [(18)] "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.~~

~~(20) [(19)] "Special deer hunt" means a one (1) or two (2) day deer hunt sponsored and overseen by the department on private land that:~~

(a) Allows a novice deer hunter to use a modern gun outside of modern gun deer season; and

(b) Shall be made available only to a:

1. Kentucky resident;

2. Person enrolled as a resident or non-resident student in a public or non-public postsecondary institution located in Kentucky; or

3. Member of the United States military, or his or her spouse or children, stationed at a military base in Kentucky.

~~(21) [(20)] "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.~~

~~(22) [(21)] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:~~

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

~~(23) [(22)] "Youth" means a person under the age of sixteen (16) by the date of the hunt.~~

~~(24) [(23)] "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:~~

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

~~(25) [(24)] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.~~

Section 2. License and Deer Permit Requirements.

(1) Unless license exempt, as established in KRS 150.170, a person who is hunting deer shall carry a valid:

(a) Kentucky hunting license~~[(while hunting)]~~; and

(b) Deer permit~~[(while hunting)]~~.

(2) Unless license exempt, as established in KRS 150.170, a youth who is hunting deer shall carry a valid:

(a) Kentucky youth hunting license~~[(while hunting)]~~; and

(b) Youth deer permit~~[(while hunting)]~~.

Section 3. Hunter Restrictions.

(1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs, to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

Section 4. Hunter Orange Clothing Requirements.

(1) During the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl or mourning dove.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl or mourning dove.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates.

(1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for sixteen (16) consecutive days.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide from the third Saturday in September through the third Monday in January.

(5) A youth or a legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth-only modern gun season for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth-only modern gun season[weekend] for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones.

(1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess,

Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock, Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery, Nicholas, Ohio, Simpson, Taylor, and Warren Counties.

(3) Zone 3 shall consist of Cumberland, Elliott, Estill, Garrard, Johnson, Laurel, Morgan, Powell, Pulaski, Rowan, [~~Simpson~~] Wayne, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Harlan, Jackson, Knott, Knox, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Rockcastle, Russell, and Whitley Counties.

Section 7. Season and Zone Limits.

(1) A person shall not take more deer than each zone allows, as established in this section.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of permit type used or zone hunted, except as established in 301 KAR 2:111, 2:178, or 3:100.

(3) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(4) A person may take up to a total of four (4) deer in Zone 2.

(5) In Zone 3, a person may take up to a total of four (4) deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer.

(6) In Zone 4, a person may take one antlerless deer, but only during:

(a) Archery season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(b) Crossbow season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(c) Any youth weekend; or

(d) The last three (3) days of the December muzzleloader season.

Section 8. Supervision of Youth Gun Deer Hunters.

(1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording.

(1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer.

(1) A person shall check a harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer

parts established in paragraphs (a) and (b) of this subsection:

- (a) For antlered deer, the:
 1. Head with antlers; or
 2. Testicles, scrotum, or penis attached to the carcass; or
- (b) For antlerless deer, the:
 1. Head; or
 2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, or if the harvested deer is out of the hunter's possession, the hunter shall attach to the carcass a hand-made tag that contains the following information:

- (a) The confirmation number;
 - (b) The hunter's name; and
 - (c) The hunter's telephone number.
- (5) A person shall not provide false information while:
- (a) Completing the hunter's log;
 - (b) Checking a deer; or
 - (c) Creating a carcass tag.

Section 11. Transporting and Processing Deer.

- (1) A person shall:
 - (a) Not transport an unchecked deer out of Kentucky;
 - (b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or
 - (c) Not sell deer hides except to a licensed:
 1. Fur buyer;
 2. Fur processor; or
 3. Taxidermist.
- (2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.
- (3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

Section 12. Special Deer Hunt Program.

- (1) A special deer hunt shall:
 - (a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;
 - (b) Take place on private land with the permission of the landowner;
 - (c) Only be overseen and sponsored by department employees; and
 - (d) Take place during the archery deer season.
- (2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

Section 13. Antlers.

- (1) A person shall not use a device that is designed to entangle or trap the antlers of a deer.
- (2) A shed of a deer shall be legal to possess.

Section 14. CWD Surveillance Zone Requirements.

- (1) A CWD Surveillance Zone shall be limited to an area surrounding the location(s) of CWD positive cervid detections as biologically and logistically necessary to monitor and combat the spread of CWD. The areas designated as part of the CWD Surveillance Zone shall be published on the department's Web site at fw.ky.gov.
- (2) In any area identified as a CWD Surveillance Zone, the following requirements shall be effective:
 - (a) In addition to items in Sections 10 and 11 above a hunter harvesting deer in a CWD Surveillance Zone shall:
 1. Transport the entire carcass or the entire head; and
 2. Telecheck confirmation number to a KDFWR authorized check station in the CWD Surveillance Zone during the identified time periods as advertised by the department at <https://fw.ky.gov>.
 - (b) A hunter harvesting deer in a CWD Surveillance Zone shall not:

1. Transport a full carcass or any part thereof outside of the CWD Surveillance Zone, except deboned meat, clean skull plates, antlers, antlers attached to a clean skull plate, clean skulls, clean teeth, finished taxidermy work, and hides of legally harvested cervids; or

2. Bait or feed any wildlife inside the CWD Surveillance Zone, except for:

- a. Normal agricultural practices, including food plots;
- b. Hanging bird feeders within the curtilage of the home; and
- c. Furbearer trapping attractants, except grain salt or mineral.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(As Amended at ARRS, November 9, 2023)**

302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730-150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. **Part** 55, 81.4, 161.1-161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

(1) "Adjacent herd" means ~~the~~ a herd of cervids occupying premises that shares a border or boundary line with premises occupied by a chronic wasting disease positive herd, including herd separated by a road or stream. ~~and~~

(2) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (3) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(3) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(4) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the APHIS.

(5) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(6) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(7) "Certified Chronic Wasting Disease (CWD) Herd" or "herd" means a group of cervids under common ownership or supervision that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means the:

- (a) Chronic Wasting Disease HCP; and
- (b) Chronic Wasting Disease HMP.

(10) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

- (a) Developed by OSV in collaboration with the herd owner to address compliance issues within an[a] HCP or HMP herd; or
- (b) That establishes the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(11) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(12) "Farmed cervid":

(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method; and

(b) Does not mean any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with an[a] HCP or HMP.

(13) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(14) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(15) "Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(16) "Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(17) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(18) "Interstate movement" means movement from another state into or out of Kentucky.

(19) "Intrastate movement" means movement solely within the boundaries of Kentucky.

(20) "Move" means to carry, enter, import, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(21) "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal that is USDA approved.

(22) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4).

(23) "Official Chronic Wasting Disease test" or "CWD test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(24) "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag is tamper-resistant and has a high retention rate in the animal.

(25) "Official identification number" means a nationally unique number that is permanently associated with a cervid and complies with:

- (a) National Uniform Eartagging System (NUES);
- (b) Animal Identification Number (AIN); or

(c) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(26) "Owner" is defined by KRS 257.010(14).

(27) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(28) "Physical inventory" means an inventory that confirms individual identification of each cervid by hands on observation to include physical or chemical restraint as needed.

(29) "Positive" means a cervid has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(30) "Premises identification number" or "PIN" means a nationally unique number allocated to a premises by a state or federal animal health official and:

(a) Is used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; and

(b) Is the number system permitted by the state of origin specifically as a CWD program site.

(31) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(32) "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that complies with the applicable International Standards Organization (ISO) standards and that bears the visual number.

(33) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(34) "USDA" means the United States Department of Agriculture.

(35) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.

(36) "Visual inventory" means an inventory done when distance observation of identification of identification devices is possible.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program.

Section 3. Required CWD program Training.

(1) Prior to initial enrollment in a CWD program, a minimum of one (1) hour initial educational training provided by the OSV shall be completed.

(2) Supplemental trainings provided by OSV shall be required when there is a change in Chronic Wasting Disease prevalence, change in Kentucky program administrative regulations, or a change in USDA CWD program standards, or any other time deemed necessary by the State Veterinarian to prevent the spread of disease. Notice for any additional training shall be provided at least thirty (30) days in advance of the date.

~~[(3)] [All persons with a HCP or HMP permit at the date this administrative regulation becomes effective shall complete an educational training for one (1) hour prior to their renewal for the following year.]~~

Section 4. Chronic Wasting Disease Herd Certification Program (HCP).

(1) An[A] HCP permit shall be required to participate in the HCP program. An[A] HCP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. An initial fee of \$150. Renewal fees the next year are described in subsection (2) of this section.

(b) The OSV shall grant ~~an~~[a] HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes fees or fines to the KDA.

(c) ~~An~~[A] HCP participant whose permit expires prior to renewal shall be subject to the penalties established in Section 19 of this administrative regulation.

(2) Annual HCP permit renewal required.

~~(a)~~ Fees shall be based on the officially tagged inventory submitted in subparagraph 5.[paragraph—(e)] of this ~~paragraph~~[subsection]. Renewal applicants shall:

~~1.[(a)]~~ Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year;

~~2.[(b)]~~ Pay a fee of \$135 for herds up to fifty (50) cervids, \$250 for herds between fifty-one (51) and 100, or \$450 for herds containing more than 101 cervids, for applications submitted prior to December 1, preceding the applicable permit year;

~~3.[(c)]~~ Pay a fee of \$150 for herds up to fifty (50) cervids, \$275 for herds between fifty-one (51) and 100, or \$500 for herds containing more than 101 cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;

~~4.[(d)]~~ Pay a fee of \$250 for herds up to fifty (50) cervids, \$375 for herds between fifty-one (51) and 100, or \$600 for herds containing more than 101 cervids, for applications submitted late, January 1 and after of the applicable permit year; and

~~5.[(e)]~~ Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section if not already on file with the OSV.

~~(b) [(f)]~~ Permits not renewed by February 15 of the applicable program year shall will be terminated from the program effective February 16 and not be eligible for renewal. Section 20 of this administrative regulation shall apply as those cervids would be not continuously enrolled and shall not be deemed farmed cervids.

(3) HCP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section and 9 C.F.R. Part 55, Subpart B, and shall follow the USDA Chronic Wasting Disease Standards, and the RFID official identification requirements of Section 8.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HCP, the participant shall:

- a. Conduct the physical inventory and continuously identify cervids as required;
- b. Provide any records required by this administrative regulation to the OSV for the cervids; and
- c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid shall have at least two (2) forms of cervid identification prior to or at the time of the annual herd inventory, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2.

a. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible

identification devices with available records. This required inventory shall be conducted in January, February, March, or April.

b. Beginning May 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical or visual inventory is completed for those herds not completing a visual[physical] inventory January, February, March, or April. The OSV shall determine what style of inventory is required for those not completed by OSV staff prior to May 1.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards. A physical inventory shall be conducted at least once in any three (3) year time period, but may occur at any time of the calendar year so that it may be completed at a time when the owner deems appropriate.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for visual or physical inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed.

2. New cervids shall not be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

- a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;
- b. For cervids taken by harvest, a report shall be submitted within seven (7) days; and
- c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days.

2. The report shall include all applicable identification numbers, including the visual tag and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected and submitted for Chronic Wasting Disease testing except if exempted in writing by request to, and approval of, the OSV. Exemptions shall only be granted in extenuating circumstances, such as natural disaster or a disease event.

4. An APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements established in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the official identification and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The official identification, species, age, and sex of the cervid;
b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;
d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and
f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:
a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; and

b. A cervid's death or harvest on the premises, including the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Herd status levels.

1. Upon a herd being first enrolled in the Herd Certification Program, the herd shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to comply with the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as the herd remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements established in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd shall be certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date shall be the latter date of:

a. The physical inventory being completed in accordance with paragraph (c) of this subsection; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection by an OSV certified CWD sample collector, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7) days of death and collection. If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may, based on the nature of the deficiencies, require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties. Deficiencies in required testing, from poor sample quality or for

failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 5. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) An[A] HMP permit shall be required to participate in the HMP program. An[A] HMP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 19 of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in subsection (4)(c) of this section if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) A cervid shall not leave an HMP-enrolled herd alive.

(b) A cervid shall not be moved to another HMP-enrolled herd.

(c) An[A] HMP herd, or any cervid within an[a] HMP-enrolled herd shall not be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section.

1. After an initial permit is issued, the participant shall enroll the herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required;

b. Submit records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid twelve (12) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.

2. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a visual or physical inventory conducted by OSV staff to verify herd compliance with program standards. A herd plan may be created to allow images or other data in lieu of a visual inventory.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Cervids that have been in inventory for four (4) years without a visual confirmation shall be presumed dead by the permit holder and written notice **shall** be provided to the OSV via mail or email. If the presumed dead cervid is later found alive it shall be added back to the inventory.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed. All female cervid additions in an HMP shall be spayed or otherwise confirmed by a veterinarian to be incapable of reproduction aft March 31, 2024.

(e) If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding. Intentional breeding shall not be allowed.

(f) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag; the date of the death, disappearance, escape; and the dates the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected and submitted for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements, which shall be considered noncompliance.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(g) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the official identification, and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The official identification, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age and sex;

d. State-federal official individual cervid identification, date, and laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection. Deficiencies in required testing, from poor sample quality or for failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 6. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures established in 9 C.F.R. 55.8.

(b) A positive or non-negative of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as established in paragraphs (a) and (b) of this subsection.

(a) A premises shall not be removed from quarantine until after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 7. CWD Sample Collection Training.

(1) Required CWD samples shall be collected by a licensed accredited veterinarian or an individual certified by the OSV.

(2) To become certified, an individual shall:

(a) Submit a request for certification to the OSV at Statevet@ky.gov or contact the OSV; and

(b) Attend a training course offered by the OSV.

(3) Certification is valid for five (5) years from the date of training course or until new sample collection protocols have been mandated by OSV or USDA. Renewal certification shall require completion of a renewal form.

(4) Certified individuals shall comply with CWD collection and submission protocols. Failure to submit quality samples may result in revocation of certification status.

(5) Certified individual shall maintain record of sample collections for ten (10) years. Records shall include a copy of the laboratory submission form or a generated report which contains the following:

- (a) Date of sample collection;
- (b) Premises Name and City where sample collection occurred;
- (c) List of official identification devices of each sample;
- (d) Number of samples collected; and
- (e) Name of Laboratory where samples were submitted.

Section 8. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain:

- (a) Identification of each animal recorded on the certificate;
- (b) A RFID and visual identification for each cervid;
- (c) The species, breed, sex, and age of each cervid;
- (d) The name and address of the owner, cosigner, or agent shipping the cervid, and phone number of each;
- (e) The location from which the animal is loaded for movement;
- (f) The name and address of the consignee or person receiving the cervid;
- (g) The location at which the animal will be received;
- (h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV;

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA category II accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise delivered to the office of the state veterinarian in the origin state within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in paragraph (a) of this subsection by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit may be submitted via an importable format as approved by the OSV.

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) A person shall not issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA category II accredited veterinarian.

Section 9. Movement Permit.

(1) A person shall not move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement, unless approved in writing by the OSV after consideration of the risks involved.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the Web site at www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the Web site.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by a:

- (a) Licensed and USDA category II accredited veterinarian;
- (b) Designee of the State Veterinarian; or
- (c) Designee of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 10. Official Identification and Other Required Identification.

(1) Beginning July 1, 2020, RFID official identification shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing official identification at the time of application. Existing official identification shall not be removed without the prior written approval of the OSV.

(2) Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual cervid and that constitute:

(a) Official USDA NUES that was applied prior to June 30, 2020; and

(b) An RFID that:

1. The RFID uniquely identifies the animal and is USDA approved;

2. The RFID is attached to the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) official RFID is placed on an animal.

(3) Use of more than one (1) official eartag.

(a) Any person applying the additional official eartag shall record the following information about the event, and submit to the OSV within seven (7) days the required information, and maintain the record for at least ten (10) years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the one or ones already attached to the animal.

(b) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for at least ten (10) years.

(4) Removal or loss of official identification devices.

(a) Removal of official identification shall be prohibited, except as approved in writing by the OSV or a USDA area veterinarian in charge if a device needs to be replaced.

(b) If a cervid loses an official identification device:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for at least ten (10) years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device shall be considered to be a retagging event and shall be noted on the Retag Form.

(5) Removal of official identification, without prior written approval of the OSV shall be strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for at least five (5) years:

(a) The date on which the previous device was removed;

(b) Contact information for the location where the device was removed;

(c) The official identification number (to the extent possible) on the device that was removed;

(d) The type of device removed (for example, metal eartag or RFID eartag);

(e) The reason for the removal of the former device;

(f) The new official identification number on the replacement device; and

(g) The type of replacement device that was applied to replace the former device.

Section 11. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervids are to be loaded upon seeking a movement permit.

(2) The POL of the specific location the cervids were loaded shall include:

(a) A PIN issued by the USDA or the Animal Health Official in the state of origin or a LID; and

(b) The owner at the time of movement and that owner's address and contact information.

Section 12. Requirements for Interstate Movement into Kentucky.

(1) A person or hauler shall not move a cervid into Kentucky without first obtaining a CVI from a licensed and USDA category II accredited veterinarian;

(2) Obtained a movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV, that includes a scheduled appointment for delivery of cervids between the hours of 6 a.m. and 9 p.m.; and

(3) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present for the unloading of the cervids at the point of destination at the time scheduled in (2) and shall be responsible for removing the transport seal and observing the offloading.

(4) An entry permit shall not be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. An entry permit shall not be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(5) An entry permit shall not be issued for a cervid that is not:

(a) Negative to an official tuberculosis test within ninety (90) days of entry; or

(b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 13. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) A CVI shall not be required if the movement is from the same herd to a different permitted premises within the same farm, if the cervid has official identification, prior to the movement.

(3) Movement shall not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present at the loading at the point of origin, or the unloading of the cervids at the point of destination for movements to a different premises.

(5) The requirements of this section shall be the responsibility of the owners, agents, and haulers of the moved cervid.

Section 14. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement shall not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required

by the state of destination, and have these documents immediately available for inspection.

(4) A cervid shall not leave Kentucky until:

(a) The CVI is written to meet the state of destination requirements by a Kentucky licensed category II veterinarian; and

(b) The owner, agent, or hauler contacts the OSV designee at least forty-eight (48) hours in advance of the movement to schedule an appointment for departure inspection and movement documentation between the hours of 6 a.m. and 9 p.m.

Section 15. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit shall not be required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 16. Reindeer Exhibition.

(1) Any reindeer exhibiting in the state of Kentucky shall obtain written permission of the OSV.

(2) Requests for an exhibition permit shall be made to the OSV in writing or electronically at statevet@ky.gov a minimum of ten (10) business days prior to the movement to the exhibit.

Section 17. Voluntary Accreditation and Certification Programs.

(1) Cervid owners wishing to seek a voluntary herd certification for brucellosis shall follow the provisions established in APHIS 91-45-16, Brucellosis in Cervidae.

(2) Cervid owners wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions established in APHIS 91-45-011, Bovine Tuberculosis Eradication. (3) After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate, for the respective disease, that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 18. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least ten (10) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes official identification, shall maintain distribution lists and documents for at least ten (10) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least ten (10) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least ten (10) years.

Section 19. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if a person:

1. Falsifies information on an enrollment application, falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. Fails to comply with an instruction from a representative of OSV; or

5. Fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder shall be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 8, 9, 10, or 11 of this administrative regulation.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the Commonwealth in violation of this administrative regulation or KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. These herds shall be subject to a physical herd inventory prior to permit issuance. A hunting or harvest shall not take place during the quarantine period. Herds shall not be re-enrolled in any program without first paying the initial fee of \$150 and the renewal fee as required in either the HCP or HMP program.

(6) Removal of official identification, from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section 20. Expiration or Removal of HCP or HMP Status. All entities that exit an HCP or HMP program that have remaining inventory shall be placed under quarantine until the[such] inventory is eliminated by harvest or sales permitted by the OSV to other HCP or HMP permit holders[shall be referred to the Kentucky Department of Fish and Wildlife for herd disposal].

Section 21. Restriction on hog hunting. No hunting of hogs or any member of the porcine species shall be allowed in any HCP or HMP permit area.

Section 22. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", October 2020;

(b) "Deceased Animal Report", May 2019;

(c) "Herd/Flock Additions", October 2020;

(d) "Herd/Flock Deletions", October 2020;

(e) "Retag Form", February 2017;

(f) "USDA Chronic Wasting Disease Program Standards", May 2019;

(g) "APHIS 91-45-16, Brucellosis in Cervidae", September 2003; and

(h) "APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 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://kyagr.com/statevet/farmed-cervids.html>.**

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2023)**

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270, **532.135, 532.140**

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. **Notify the warden** 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 [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.

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, November 9, 2023)**

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.397, 15.400(1), 15.408, 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.408, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

1. The application has been received and is complete; or
 2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

- (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)

(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. In writing; and
2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of

appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunications, and court security officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunications, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunications, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements. ~~§~~ The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities that/which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
 - a. Integrity; and
 - b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures that/which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)

1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's

overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

- a. Essentially suitable;
- b. May be unsuitable; or
- c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and

- (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions

or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

- a. A cumulative score of at least fifty (50) points for all five (5) events; and
- b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;
- b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;
- c. 300 meter run in less than sixty-five (65) seconds;
- d. Push-ups. Twenty-five (25) push-ups; and
- e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

- a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;
- b. All failed events shall be retested on the same date; and
- c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to

the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoylecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoylecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy

the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the

agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

- (a) Passes or fails the test; or
- (b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

- (a) Sixty-five (65) dollars for each psychological screening;
- (b) \$100 for each polygraph examination; and
- (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

- 1. The actual approved budget of the governmental unit for the current and the preceding year;
- 2. The number of certification applicants for the current and preceding year;
- 3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
- 4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

- 1. The application has been received and is complete; or
- 2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

- 1. An agency may appeal a decision made by KLEC to reject an

agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted in writing with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

- 1. The twenty-four (24) hour legal update Penal Code course;
- 2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in ~~paragraph (a) of this subsection~~ **paragraph (a) of this section**.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a)

1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

(a) A certificate of completion or other official documentation showing completion of basic training;

(b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or

2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by

the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

- (a) Polygraph;
- (b) Suitability screening;
- (c) Drug screen; and
- (d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

- a. A controlled substance as prescribed by a physician; or
- b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible

violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2023[2024];

(c) "KLEC Form C - Grandfather Information", 2021;

(d) "KLEC Form D - All Standards Met", 2023[2022];

(e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", October 2022;

(f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;

(g) "KLEC Form F - Status Update", 2021;

(h) "KLEC Form G-1 - Medical Examination Report", 2021;

(i) "KLEC Form G-2 - Medical History Statement", 2021;

(j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;

(k) "KLEC Form H-1 - Background Investigation", 2021;

(l) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021;

(m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;

(n) "KLEC Form J - JTA Submission", January 19, 1999;

(o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;

(p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;

(q) "KLEC Form L-1 - Code of Ethics", 2021;

(r) "KLEC Form L-2 - Canon of Ethics", 2021;

(s) "KLEC Form Q - Agency Submission Form", 2021;

(t) "KLEC Form Q-3 - Drug Screening Approval", 2021;

(u) "KLEC Form Q-4 - Polygraph Approval", 2021;

(v) "KLEC Form Q-5 – Suitability Screener Approval", 2021;

(w) "KLEC Form tele-Q - Agency Submission Form", 2021;

(x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;

(y) "KLEC Form T-1a - Physician's Medical Release Form", 2021;

(z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;

(aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;

(bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc) "KLEC Physical Fitness Testing Protocols", 2021; and

(dd) "KLEC Education Form - Applicant Education Verification", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the council's Web site at <https://klecs.ky.gov/>.

CONTACT PERSON: Jonathan Gifford, Staff Attorney III, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND LABOR CABINET

Board of Education

Department of Education

(As Amended at ARRS, November 9, 2023)

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160[

](1)(c) requires the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district to submit a plan and report which describes[describing] its educational initiatives that have technology components and their unmet technology need. KRS 157.655 authorizes a local public school district to participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the Kentucky Board of Education. Based on review of the unmet technology need, it has been determined that full implementation of the Kentucky Education Technology System (KETS) cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. This administrative regulation establishes the requirements governing the use of local monies to reduce unmet technology need to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions.

(1) "Department" means the Kentucky Department of Education.

(2) "District education technology plan" means the plan developed by the local school district to address the unmet technology need of the district.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system established in the technology master plan issued by the Kentucky Board of Education and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System approved by the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved district education technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the education technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process in accordance with the master plan.

Section 3. Reducing Unmet Need.

(1) In categories of unmet technology need, as established in the [2024-2030] [2018-2024] KETS Master Plan for Education Technology 2024-2030, a district shall limit procurements to those that will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) The department shall assist districts in selecting equipment, software, and services which[that] will reduce the unmet technology need.

Section 4. Alternative Technology. For technology components having no established KETS standards, a local school district may propose alternative technologies (waivers) in the local district education technology plan, particularly if the technology is proposed to achieve innovation. The department shall respond to the waiver within a three (3) week time period. If denied, the local school district may appeal to the Commissioner of Education.

Section 5. Incorporation by Reference.

(1) ~~“[The 2024-2030][2018-2024][KETS Master Plan for Education Technology 2024-2030”, [dated—]August 2023[February 2018], is [hereby] incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office of Education Technology, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. This material may be viewed at: <https://education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, November 9, 2023)

702 KAR 3:340. Approval of school district lease agreements.

RELATES TO: KRS ~~[45.570,]~~Chapter 45A, 65.944, 65.946, 156.070, 160.160, 424.260, Ky. Const. Sec.177

STATUTORY AUTHORITY: KRS 65.944(1)(b), 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~156.070[156.160]~~ and ~~156.160[156.070]~~ require the Kentucky Board of Education to promulgate administrative regulations concerning the management of the school districts. KRS 65.944(1)(b) requires the Kentucky Board of Education to promulgate administrative regulations to implement requirements for lease approval by the Commissioner of Education. This administrative regulation establishes requirements for approval of school district lease agreements.

Section 1. Administrative Guidelines.

(1) To request approval of a lease agreement in excess of \$100,000 from the Commissioner of Education pursuant to KRS 65.944(1)(b), the district shall submit a copy of the proposed lease and a completed Local Board Attorney Certification form to the Department of Education prior to finalization of the lease agreement.

(2) The school district shall submit the proposed lease to the Department of Education who shall approve or disapprove the lease within thirty (30) business days.

(3) During the evaluation process, the Department of Education may request additional documentation to properly evaluate the proposed lease agreement.

Section 2. Final Approval and Reconsideration.

(1) Final approval of a proposed school district lease agreement in excess of \$100,000 shall be granted by the Commissioner of Education before the agreement takes effect.

(2) Upon receiving written approval from the Commissioner of Education, a school district may enter into the lease.

(3)(a) The Commissioner of Education shall send written notification to the school district if the agreement is not approved.

(b) The notice shall contain the reasons the agreement was not approved.

(c) A school district may request reconsideration by the Commissioner of Education if alterations are made to the proposed lease which alleviate the concerns expressed by the Commissioner of Education.

Section 3. Incorporation by Reference.

(1) "Local Board Attorney Certification", ~~November~~August 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material may be viewed at: <https://education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, November 9, 2023)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.031, 158.033, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 157.360, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 defines attendance credit for moral instruction, and KRS 159.035 defines attendance for 4-H activities, military basic training, page programs of the General Assembly, attendance at the Kentucky State Fair, educational enhancement opportunities, and when a parent or custodian is called to active military duty. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 158.033;

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive, at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7; or

(i) The pupil is enrolled and participating in a full-time, online, virtual and remote learning program pursuant to the requirements of 704 KAR 3:535. A pupil shall be counted in attendance pursuant to the requirements of 704 KAR 3:535.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy. However, a pupil being transported to school on a district school bus or district vehicle shall not be considered tardy if the cause of the lateness is due to the bus or vehicle arriving after the beginning of the school day.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes. (1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If ~~[a pupil is recommended by]~~ the local board of education determines the pupil is eligible for accelerated placement into the entry or second level of the primary program, the district shall ~~document[forward that] the determination[recommendation to the department for approval]~~ with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports.

(1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils. (1) The district of attendance shall provide a list of all enrolled nonresident students to the district of residence not later than November 1 of each school year.

(2) The district of attendance shall provide to the district of residence a list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(c) not later than November 1 of each school year.

Section 9. Weather-related Low Attendance Days. (1) The SAAR ~~may~~:

(a) ~~May~~ substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and
(b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR ~~may~~:

(a) ~~May~~ substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(8); and

(b) Shall constitute certification that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same

public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools and charter schools) in Kentucky during the current school year;

(9) R22 - A pupil previously enrolled in a charter school in Kentucky during the current school year;

(10) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(11) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(12) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(13) W08 - A pupil withdrawn due to death;

(14) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(15) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian, or other custodian and the school in accordance with 704 KAR 5:060;

(16) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(17) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(18) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(19) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(20) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district, but thereafter enrolled in the district;

(21) W25 - A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(22) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(23) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(24) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(25) W29 - A pupil who has moved out of state or out of the United States;

(26) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(27) W31 - A pupil in the preschool program, withdrawn due to immaturity or mutual agreement by the parent, guardian, or other custodian and the school;

(28) W32 - A pupil transferred to a charter school. The reentry

code to use with W32 shall be R22;

(29) C01 - A pupil who completes the school year in the school of the most current enrollment;

(30) G01 - A pupil who graduates in less than four (4) years;

(31) G02 - A pupil who graduates in four (4) years;

(32) G03 - A pupil who graduates in five (5) or more years;

(33) G04 - A pupil who graduates in six (6) or more years; and

(34) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district, but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference.

(1) "Home/Hospital Program Form", July 2023~~[October 2019]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at <https://education.ky.gov/districts/enrol/Documents/HomeHospitalProgramForm.pdf>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, November 9, 2023)**

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

RELATES TO: KRS ~~Chapter~~Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2)~~(a) and (c) authorize~~authorizes the Kentucky Horse Racing Commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. This administrative regulation defines the terms used in 810 KAR Chapter 4.

Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and that is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing an eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or official of a meeting.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to KAR Title 810.

(7) "Association" is defined by KRS 230.210~~(6)~~.

(8) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race are not accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" is defined by 810 KAR 6:001.

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means in flat racing the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;
 (e) Imposition of fines or penalties;
 (f) Denial of purse money;
 (g) Forfeiture of purse money; or
 (h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(24) "Field" or "mutuel field" means a single betting interest, which is not a mutuel entry, involving more than one (1) horse.

(25) "Flipping halter" means a halter used in the starting gate to help prevent a horse from flipping, which is used in Quarter Horse races only.

(26) [(25)] "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(27) [(26)] "Foul" means any action by any jockey that tends to hinder another jockey or any horse in the proper running of the race.

(28) [(27)] "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(29) [(28)] "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(30) [(29)] "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(31) [(30)] "Inquiry" means an investigation by the stewards of a contest prior to declaring the result of the contest official.

(32) [(31)] "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(33) [(32)] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(34) [(33)] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(35) [(34)] "Maiden" means in flat racing, a horse that has never won a race at a recognized meeting in any country.

(36) [(35)] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(37) [(36)] "Month" means calendar month.

(38) [(37)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(39) [(38)] "Nominator" means the person in whose name a horse is entered for a stakes race.

(40) [(39)] "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, trainer, or owner before the race is declared official.

(41) [(40)] "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards.

(42) [(41)] "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(43) [(42)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(44) [(43)] "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" is defined by KRS 230.210(18).

(45) [(44)] "Post" means the starting point of a race.

(46) [(45)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(47) [(46)] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(48) [(47)] "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, or official prohibited by rules, which, if true, would exclude that horse or jockey from racing.

(49) [(48)] "Purse" means the gross cash portion of the prize for which a race is run.

(50) [(49)] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(51) [(50)] "Race" means a running contest between horses, ridden by jockeys at a recognized meeting, during regular racing hours, for a prize.

(52) [(51)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(53) [(52)] "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(54) [(53)] "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(55) [(54)] "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(56) [(55)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(57) [(56)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(58) [(57)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(59) [(58)] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(60) [(59)] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(61) [(60)] "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(62) [(61)] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse.

(63) [(62)] "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(64) [(63)] "Steward" means a duly appointed racing official with powers and duties established in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(65) [(64)] "Subscription" means nomination or entry of a horse in a stakes race.

(66) [(65)] "Suspended" means withdrawal of racing privileges by the stewards or commission.

(67) [(66)] "Thoroughbred racing" is defined by KRS 230.210(32).

(68) [(67)] "Tote" or "tote board" means the totalizator.

(69) [(68)] "Unplaced" means a horse that finishes a race outside

the pari-mutuel payoff.

(70)(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(71)(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(72)(74) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, November 9, 2023)**

810 KAR 4:010. Horses.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2)(a), (c), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2)(a) and (c) and 230.260(8) authorize the Kentucky Horse Racing Commission ~~[(the "commission")]~~ to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary or the secretary's designee, or horse identifier or the identifier's designee, full access to horse and trainer records from all tracks in North America, including current owner information.

Section 2. Registration and Identification Required.

(1) A horse shall not be entered or raced in Kentucky unless:

(a) The horse is duly registered, as applicable, in The Jockey Club breed registry, the American Quarter Horse Association, the Appaloosa Horse Club, the Arabian Horse Association Registry, or the American Paint Horse Association, or their respective successors; and

(b)

1. The registration certificate, virtual or digital certificate, or racing permit issued by the applicable breed registry for the horse is on file with the racing secretary; or

2. The information contained on the registration certificate, virtual or digital certificate, or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may at any time require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit or other proof of ownership.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner, and any virtual or digital certificate shall be transferred to the new owner electronically. The new owner shall report the change in ownership to the stewards.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit prior to a horse being entered or raced in Kentucky.

Section 3. Ringers Prohibited.

(1) A horse shall not be entered or raced in Kentucky designated by a name other than the name under which the horse is currently registered with the applicable breed registry. If a horse's name is changed with the applicable breed registry, and the horse has raced under its previous name, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse that he or she owns or is in his or her care to a racing official or member of the regular news media.

(3) A horse shall not race in Kentucky unless identified by:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, or by the comparable authorized organization applicable to the breed of the horse;

(b) An electronic horse identification microchip that accurately identifies the horse, is compliant with the international standards ISO 11784, is verified by agents of the Thoroughbred Racing Protective Bureau, or its successor, and is documented in The Jockey Club database or by the comparable authorized organization applicable to the breed of the horse; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in Kentucky if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

(a) The neurectomy has been reported by the trainer to the stewards; and

(b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual or digital certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual or digital certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours after the race requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office.

Section 5. Health Certificate Required.

(1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless a Certificate of Veterinary Inspection is issued by an accredited veterinarian:

(a) Not more than ten (10) days prior to the horse's arrival on the grounds; or

(b) Within a lesser interval as prescribed by the racing association in consultation with the Kentucky Department of Agriculture.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under

the jurisdiction of the commission and all condition books of licensed associations.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Thoroughbred Age Restrictions.

(1) A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

(2) A first time starter five (5) years of age or older shall be approved by a commission veterinarian prior to entry.

Section 8. Other Age Restrictions. A quarter horse, paint horse, Arabian, or Appaloosa horse six (6) years of age or older shall not be entered or raced in a race restricted to maidens. A horse thirteen (13) years of age or older shall not be entered or raced.

Section 9. Fillies and Mares Bred.

(1) A filly or mare that has been covered by a stallion shall:

(a) Be so reported to the racing secretary prior to being entered in a race; and

(b) Not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate, or otherwise provided to the stewards, indicating that the stallion service fee has been paid or satisfied.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare in-foal shall not be entered in a race 120 days or more after the date of last cover.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list in any racing jurisdiction, unless the horse on a veterinarian's list, stewards' list, or starter's list has a posted off date on or before the date of the race for which it is being entered;

(3) Has previously raced, but has made no starts in the last 365 days or more, unless approved by a commission veterinarian prior to entry;

(4) Is suspended in any jurisdiction;

(5) Has been administered any drug in violation of 810 KAR 8:010;

(6) Is blind or has seriously impaired vision in both eyes;

(7) Is not correctly identified to the satisfaction of the stewards; or

(8) Is owned wholly or in part by or is trained by an ineligible person.

Section 11. Equipment.

(1) Riding crops and blinkers shall be used consistently on a horse while racing.

(2) Permission to change use of any equipment used on a horse from its previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that can be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)

(a) Any riding crop shall be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of three-eighths (3/8) inch.

(d)

1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)

(a) Except as established[set forth] in paragraph (c) of this subsection, the[The] following shall not be used on the front shoes of horses while racing or training on any racing surface:

1. Horse shoes that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of horses while racing or training.

(c) Front horse shoes on quarter horses may have a toe grab that measures up to four (4) millimeters from the ground surface side of the shoe. Hind horse shoes on quarter horses may have a toe grab, that measures up to one-quarter (1/4) inch from the ground surface side of the shoe.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and to the appropriate breed registry applicable to the horse. The alteration shall be noted on the horse's registration certificate, racing permit, virtual or digital certificate, or entry in the electronic system.

Section 13. Reporting Death of Horse. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission. If a postmortem examination is conducted:

(1) All shoes and equipment on the horse's legs shall be left on the horse;

(2) The commission, through its designee:

(a) Shall take possession of the horse upon death;

(b) Shall, if commission personnel are present, collect and

submit for analysis blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs; and

(c) Shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

(3) The remains of the horse shall not be returned after completion of the postmortem examination.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 8:010.

Section 15. Incorporation by Reference.

(1) "ISO 11784", 2004 is incorporated by reference.

(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, Monday through Friday, 8 a.m. to 4:30 p.m. This document is also available on the International Organization for Standardization ("ISO") Web site at ~~the following URL:~~ <https://www.iso.org/standard/38799.html>.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, November 9, 2023)

810 KAR 4:030. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2)(a), (c), 230.260(8) NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2)(a) and (c) ~~authorize~~ authorizes the Kentucky Horse Racing Commission ~~[(the "commission")] to~~ promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) ~~authorizes~~ grants the commission ~~[the authority] to~~ regulate conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries.

(1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of at least one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to subsection (3) of this section.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered as reflected by its registration certificate, racing permit, or virtual certificate.

(a) A horse shall not race unless registered pursuant to 810 KAR 4:010 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 8:030 for incorrect identification.

(5) The entry shall indicate usage of furosemide pursuant to 810 KAR 8:010.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)

(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse that has not started in the past ninety (90) days shall not be permitted to start unless it has at least two (2) published workouts during the past ninety (90) day period, one of which occurs within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(c) A horse that has not started in the past 180 days shall not be permitted to start unless it has at least three (3) published workouts during the past 180-day period, one (1) of which occurs within twenty (20) days of entry, at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workouts failed to be published through no fault of the trainer.

(d) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(e) A workout not appearing in the official program shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutual windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(f) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

~~(g) [A minimum acceptable published workout time for a quarter horse is 220 yards at 14.00 seconds.~~

~~(h) Quarter horses that have never raced around a [the] turn shall have completed at least one (1) workout at 660 yards or farther [further] within thirty (30) days prior to entry.~~

~~(h)(i) Quarter horses that have previously started in a race around a [the] turn, but have not started in such a race within sixty (60) days, shall complete at least one (1) workout at 660 yards or farther within thirty (30) days [day] prior to entry.~~

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

(10) A horse shall only be permitted to enter if at the time of entry, the owner, trainer, or an authorized agent of the owner or trainer submits a complete medical record for the horse for the fourteen (14) day period prior to the entry date.

~~(11) As a condition of entry, quarter horses shall either submit negative hair samples with a test date within thirty (30) days of the race or have a hair sample pulled by a commission veterinarian prior to the race and sent to a testing laboratory [as a condition of entry]. If a hair sample taken by a commission~~

veterinarian returns a positive finding, the horse shall be disqualified and the owner and trainer may incur penalties established in 810 KAR 8:030. In addition, all quarter horses shall submit to out-of-competition testing as established/governed by 810 KAR 8:040.

Section 4. Limitation as to Spouses.

(1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as established in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries.

(1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, may be joined as a mutuel entry and single betting interest.

(3) More than two (2) horses having common ties through ownership or training shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, or having common ties through training, a preference for one (1) of the horses shall be made.

(4)

(a) Two (2) horses having common ties through ownership or training shall not start in a purse race to the exclusion of a single entry.

(b) In any race, the racing secretary may uncouple entries having common ties through training or ownership to make two (2) separate betting interests.

Section 6. Subscriptions.

(1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings.

(1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race.

(1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)

(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(b) Except as established in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;

2. The horses entered represent different betting interests; and

3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training or ownership, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races.

(1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the conditions established in paragraphs (a) through (c) of this subsection.

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions.

(1) Post positions for all races shall be determined by lot, except as established in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List.

(1) If the number of entries for a race exceeds the number of horses permitted to start, as established by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered, but not drawn, into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)

(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on a future race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes, handicaps, races at subsequent meets, or races in other jurisdictions.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

(6) If [When] there is a scratch in a straightaway quarter horse race that has an also eligible list, the also eligible horse shall take the post position of the scratched horse. If [When] there is a scratch in a quarter horse race around a turn, the also eligible horse [Quarter horses that gain a position in the race from the also eligible list] shall take the outside post position in the order drawn from the also eligible list.

Section 12. Preferred List.

(1) The racing secretary shall maintain a list of horses that were entered, but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on a future race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations.

(1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches.

(1) Scratches shall be irrevocable and shall be permitted under the conditions established in this section.

(a) Except as established in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Scratch time may be extended by the stewards at their discretion if warranted. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and

2. Intention to scratch has been filed in writing with the racing secretary or the secretary's assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before scratch time, unless

permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for at least one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

Section 17. Examination by Attending Veterinarian.

(1) Subject to the exception in subsection (4) **of this section**, a horse shall only be entered if:

(a) The horse has been examined by an attending veterinarian licensed by the veterinary regulatory body in the jurisdiction where the examination occurs no more than three (3) days prior to entry;

(b) The attending veterinarian certifies in writing that the horse is in serviceable, sound racing condition; and

(c) The written certification is provided to the Equine Medical Director or designee no later than the time of entry.

(2) The examination required by ~~[paragraph (a) of]~~subsection (1) **(a)** of this section shall include watching the horse jog in hand.

(3) If the attending veterinarian who examines the horse prescribes a diagnostic test as part of the evaluation of the horse's soundness, the results of the test shall be provided to the commission's veterinarian no later than one (1) day before the horse is set to start.

(4) If a racing secretary contacts a trainer to fill a race, the trainer may enter a horse prior to obtaining the examination and written certification required in this section, if the certification required in this section is provided to the Equine Medical Director or designee on the day that the horse is entered.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, November 9, 2023)

810 KAR 4:040. Running of the race.

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2) **(a), (c)**, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) **(a) and (c)** and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation **establishes[sets forth]** the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in paddock not to be touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier;
- (9) Outrider; or
- (10) Jockey.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post, and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

- (1) All horses shall parade and carry their declared weight from the paddock to the starting post.
 - (a) The parade shall pass the stewards' stand.
 - (b) After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post.
 - (c) With the permission of the stewards, a horse may be excused from parading with the other horses.
- (2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.
 - (3) If a jockey is thrown on the way to the post:
 - (a) The jockey shall remount at the point at which thrown; or
 - (b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

- (1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.
- (2) The starter shall unload the horses in the gate when instructed by the stewards if:
 - (a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and
 - (b) The horse is not immediately taken in hand by the outrider and brought back for reloading.
- (3) The starter shall reload the horses in their proper order upon order of the stewards.
- (4) The starter shall report all causes of delay to the stewards.

(5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

(1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

- (a) Immediately post the "inquiry" sign;
 - (b) Advise the public to hold all pari-mutuel tickets; and
 - (c) Determine, after consulting with the starter and viewing the race replay, whether or not the horse was precluded from obtaining a fair start.
- (2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a pari-mutuel entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.

(3) Stakes fees for a ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.

(5) The use of a flipping halter as safety equipment may be permitted in Quarter Horse races only, at a trainer's discretion, if approved by track management and the starter. The use of a flipping halter shall be noted at time of entry and in the official program.

(6) If the stewards in a quarter horse race determine that a door at the front of the starting gate failed to open properly or timely due to a horse equipped with a flipping halter:

- (a) The stewards shall rule the horse to be a starter and eligible for race placement and purse earnings; and
- (b) There shall not be a pari-mutuel refund.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

Section 12. Fouls.

- (1) A leading horse if clear is entitled to any part of the track.
- (2) If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul.
- (3) If a jockey strikes another horse or jockey, it is a foul.
- (4) If, in the opinion of the stewards, a foul alters the finish of a race, an offending horse may be disqualified by the stewards.
- (5) In a quarter horse straightaway race, every horse shall maintain position as nearly as possible in the lane in which the horse starts.
- (6) If a horse is disqualified for interference during the running of quarter horse time trials, the disqualified horse shall receive the time of the horse it is immediately placed behind, plus $\frac{1}{1000}$ th of a [one-one-thousandth] second. The disqualified horse shall be eligible to qualify for a final or consolation race based upon the assigned time.

Section 13. Stewards to Determine Foul Riding.

(1) A jockey shall make a best effort to control and guide his or her mount in such a way as not to cause a foul.

(2) The stewards shall take cognizance of riding that results in a foul, irrespective of whether or not an objection is lodged.

(3) If, in the opinion of the stewards, a foul is committed as a result of a jockey not making a best effort to control and guide his or her mount to avoid a foul, whether or not intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out.

(1) Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time, while in compliance with Section 15 of this administrative regulation.

(2) A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money.

(3) A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards.

(4) Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse.

(5) If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Riding Crops.

(1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

(5) Allowable Uses of a Riding Crop.

(a) The riding crop may be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race.

(b) If necessary during a race, a riding crop may be used in a backhanded or underhanded fashion from the 3/8 pole to the finish line. This use shall not be counted toward the use of the crop six (6) times in the overhand fashion, as allowed in subsection (6) of this section. The use of the crop shall not rise above the rider's helmet at any point.

(c) A riding crop may also be used if:

1. The horse is tapped on the shoulder with the crop in the down position while both hands are holding onto the reins and both hands are touching the neck of the horse; and

2. The crop is shown or waved without contact with the horse and the horse is given time to respond before the horse is struck.

(6) A riding crop may be used to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse, with the following exceptions:

(a) Use of the crop in any manner, other than underhanded or backhanded as established in subsection (5)(b) of this section, or tapping on the shoulder as established in subsection (5)(c) of this section, resulting in more than six (6) times in the overhand manner;

(b) Use of the crop and making contact with the horse more than two (2) successive strikes without allowing the horse a chance to respond;

(c) Use of the crop with the rider's wrist above helmet height;

(d) Use of the crop on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;

(e) Use of the crop during the post parade or after the finish of the race except if necessary to control the horse;

(f) Excessive or brutal use of the crop causing injury to the horse;

(g) Use of the crop causing welts or breaks in the skin;

(h) Use of the crop if the horse is clearly out of the race or has obtained its maximum placing; and

(i) Use of the crop even though the horse is showing no response.

(7) A riding crop shall not be used to strike another person.

(8) After the race, a horse shall be subject to inspection by a racing official or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.

(9) A crop may be used during workouts if the use does not violate subsection (6)(c) through (i) of this section.

(10) The giving of instructions by any licensee that, if obeyed, would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.

(11) Only padded/shock absorbing riding crops that have not been modified in any way may be carried in a race.

(12) During a race, if a jockey rides in a manner contrary to this rule, the stewards shall impose a minimum fine of \$500, a minimum suspension of three (3) days, or both, if in the opinion of the stewards, the violation is egregious or intentional. Factors in determining whether a violation is egregious shall include at least the following:

(a) Recent history of similar violations;

(b) Number of uses over the total and consecutive limits described in this section; and

(c) Using the crop in the overhanded position more than six (6) times.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel Payoff. Once satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and KAR Title 810, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes shall be final, and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel wagering.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amended After Comments)

201 KAR 16:510. Fees for veterinarians.

RELATES TO: KRS 321.190, 321.193, 321.201, 321.211, 321.221, 321.235, [321.240]321.320

STATUTORY AUTHORITY: KRS 321.193(2)[321.193(1), (5)], 321.201(1), 321.211(1)-(3), (5), 321.221(1), 321.235(1)(c)[321.235(3)], 321.320[321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c)[321.240(5)] requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. KRS 321.211(1) mandates that veterinarians pay a renewal fee to the board as a condition of licensure. KRS 321.201 authorizes the board to issue a special permit for the practice of veterinary medicine, and KRS 321.235(1)(c) authorizes the board to set fees for such special permits. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement[those] fees for veterinarians, as well as fees for special permits. This regulation also establishes reduced and waived fees for military servicemembers.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. [Application Fees for Veterinarians.]

[(1)] [The application fee for a veterinarian shall be \$100.]

[(2)] [The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.]

[Section 3.] Examination Fees for Veterinarians.

(1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International Council for Veterinary Assessment (ICVA), its designee, or current test administrator.

(2) The fee for the Kentucky~~[-State]~~ Board of Veterinary Examiners state jurisprudence exam[Examination] shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16:530 or online equivalent form. In 2024, or at the time when the ICVA takes over the NAVLE eligibility review process, whichever is later, the KBVE shall no longer accept retake applications or collect retake fees.

Section 3. Fees for Special Permits.

(1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be \$200.

(2) The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530, or online equivalent forms.

(3) A special permit shall not be renewed. Following expiration of a special permit, an individual shall reapply for a new special permit pursuant to the limitations established in KRS 321.201.

Section 4. Application Fees for Veterinarians.

(1) The application fee for a veterinarian license shall be \$350[\$200].

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

Section 5.[Section 4.] Renewal Fees for Veterinarian Licenses[Veterinarians]. The following fees shall be paid in connection with licensure renewals.[:]

(1) The renewal deadline shall be September 30 of each year ending in an even number. The renewal biennium is the time period beginning the day after the renewal deadline to the next renewal deadline.

(2)[(a)] Except as provided by subsections (5)-(6)[paragraphs (b) and (c)] of this section[subsection], the biennial renewal fee for licensure as a veterinarian in active status shall be as established in paragraphs (a)-(c) of this subsection[\$400][\$200][-if]:

(a) Until June 29, 2026, the renewal fee shall be \$275.

(b) Between June 30, 2026, and June 30, 2028, the renewal fee shall be \$350.

(c) After June 30, 2028, the renewal fee shall be \$400.

[(3)-(4)] The Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form shall be[is] complete, and include[including] all required attachments, continuing education credits, and fee payment; and

[(4)-(2)] The complete package shall be[is] submitted to the board for review and approval no[not] later than September 30 of the second year of the renewal biennium.

[(5)-(b)] For veterinarians who are initially licensed in the second year of the biennium between 365 days and 182 days prior to the end of the renewal biennium, the licensure renewal fee shall be reduced by half[to \$200][\$100] during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

[(6)-(c)] For veterinarians who are initially licensed in the second year of the biennium between 181 days and the last day of the renewal biennium, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

[(7)-(2)] Utilization of Renewal Grace Period.

(a) During the sixty (60) day grace period established by KRS 321.211(2), a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to and approved by the board.

(b) The late fee for biennial renewal shall be \$300[\$200][\$100] in addition to the renewal fee as described in Section 5(2) and (5)-(6)[Section 4(1) or Section 6] of this administrative regulation.

(c) The veterinarian shall submit the complete Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 of a year ending in an even number[during the last year of the biennium].

[(8)-(3)] A veterinarian's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30 each year ending in an even number.

Section 6.[Section 5.] Reinstatement Fees for Veterinarians.

(1)

(a) Except as provided by subparagraphs 1.-2. of this paragraph and Section 7[Section 6] of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(6)[KRS 321.211(3)], a veterinarian shall[may] pay a reinstatement fee as established in subparagraphs 1.-3. of this paragraph to reinstate their license to active status[of \$1,000][\$400] and]

1. Until June 29, 2026, the licensure reinstatement fee shall

be \$675.

2. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be \$775.

3. After June 30, 2028, the licensure reinstatement fee shall be \$850.

(b) The applicant shall submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:540 or online equivalent form, including all required attachments, to the board for reinstatement of ~~their~~[his or her] license.

(c)[(b)] A veterinarian shall not apply for a new license during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian shall apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 7.[Section-6:] Inactive Status of License.

(1)

(a) A veterinarian ~~shall~~[may] request inactive licensure status in accordance with 201 KAR 16:580.

(b) If more than ninety (90) days prior to the renewal deadline or more than 150 days prior to the grace period deadline,[Outside of a renewal window,]~~[If using]~~ the Request for Licensure Status Change form ~~shall be required,~~ and there shall not be a fee.

(c) If less than ninety (90) days prior to the renewal deadline or less than 150 days prior to the grace period deadline,[During an open renewal window,]~~[If using]~~ the Renewal Application for Veterinarians form ~~shall be required,~~ and the required fee shall ~~paid~~[be] as established in subsection (2) of this section.

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be ~~\$100~~[\$275]~~[\$400]~~ per renewal biennium.

(b) The late fee for biennial renewal of an inactive veterinarian license shall be \$200 in addition to the renewal fee as described in Section 7(2)(a) of this administrative regulation, and[The late fees established in Section 4(2) of this administrative regulation] shall apply to a veterinarian license in an inactive status that was not renewed by September 30 of the **second year of the renewal** biennium.

(c) A veterinarian license in an inactive status that is not renewed by November 30 shall be ~~moved to an~~[deemed to be] expired ~~status~~.

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate ~~their~~[his or her] license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee [of \$400][200] due at the time of application, as provided for in subparagraphs 1.-2. of this paragraph.

1. For an inactive veterinarian license that has been in inactive status less than twenty-four (24) months:

a. Until June 29, 2026, the licensure reinstatement fee shall be \$500.

b. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be \$550.

c. After June 30, 2028, the licensure reinstatement fee shall be \$600.

2. For an inactive veterinarian license that has been in inactive status greater than twenty-four (24) months, the licensure reinstatement fee shall be \$400.

Section 8.[Section-7:] Retirement of a Veterinary License.

(1)

(a) A veterinarian may request to retire ~~their~~[his or her] license at any time.

(b) The one-time fee for this service shall be twenty-five (25) dollars, which shall be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580 or the Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent forms.

(2) Once a license is retired it shall not be reactivated. If a veterinarian holds a retired license and wishes to practice again, ~~they~~[he or she] shall apply to the board for a new license to practice veterinary medicine in the Commonwealth of Kentucky.

Section 9.[Section-8:] Fee Reduction for Military Personnel.

(1) If a veterinarian applicant submits a copy of their current military orders or~~[his or her]~~ DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall waive or reduce fees as indicated in this section.

(a)[(4)] For active duty military, active reserves, and National Guard service persons, an individual's initial application fees, the Kentucky State Exam fee, and the biennial renewal fees shall be waived.

(b)[(2)] For retired military personnel with twenty (20) or more years of service, an individual's initial application fees shall be waived, and the biennial renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(c)[(3)] For any other military veteran, the initial application fees shall be waived.

(d)[(4)] All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall still be met.

(2) In conformity with federal Pub.L. No 117-333, if a veterinarian applicant who is an active duty servicemember, or their spouse is an active duty servicemember, then all application fees to the board shall be waived when all of the following conditions are met:

(a) The servicemember, and the service member's spouse, if one exists, shall have their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinarian shall hold at least one (1) license equivalent in scope in another United States jurisdiction;

(c) Within ninety (90) days of relocating, the veterinarian shall register with the board on the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, in conformity with 201 KAR 16:540, Section 1(4).

(d) The servicemember shall submit a copy of their current military orders to the board;

(e) All veterinarian licensees held in any jurisdiction by the veterinarian shall remain in good standing;[and]

(f) In order to demonstrate compliance with the requirement of subparagraph (2)(e) of this section, the servicemember or their spouse shall submit an AAVSB VAULT report to the board; and

(g) The veterinarian licensee shall submit to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for persons seeking a veterinarian license from the board to gain the ability to practice veterinary medicine in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinarian licensure, as mandated in KRS 321.190, 321.193, 321.201(1), 321.211, and 321.235.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and

321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep all mandated board programs operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and 321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for licensure as a veterinarian.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,680 veterinarians, approximately 15 special permit holders, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure or permitting, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds. Costs for the board

have increased, and it is necessary to raise fees to continue operations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering of fees is applied to applications from U.S. military servicemembers. Pursuant to public law Public Law No 117-333, the board provides reduced or waived fees for active duty military. Discharged and retired military servicemembers are also provided reduced or waived fees associated with licensure as a veterinary technician.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193(2), 321.201(1), 321.211(1), (5), 321.235(1)(c), 321.320

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$1.2 million on a biennial basis. Because veterinarians renew their license only every other year, the annual amount varies significantly. In F.Y.s ending in odd numbers, the regulation will only generate \$190,000; in F.Y.s ending in even numbers, the regulation will generate an additional \$1 million.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$1.2 million on a biennial basis. Because veterinarians renew their license only every other year, the annual amount varies significantly. In F.Y.s ending in odd numbers, the regulation will only generate \$190,000; in F.Y.s ending in even numbers, the regulation will generate an additional \$1 million.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$1.2 million biennially (see note above, in # 3(b))

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new veterinarian license, renew or reinstate, pay late fees, maintain an inactive license, or retire veterinarian license. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The fees established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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

Cost Savings (+/-): None.

Expenditures (+/-): -\$750,000 annually.

Other Explanation: Additional expenses are anticipated by the KBVE

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

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amended After Comments)

201 KAR 16:512. Fees for veterinary technicians.

RELATES TO: KRS 321.190, 321.235[321-240], 321.441, 321.442

STATUTORY AUTHORITY: KRS 321.235(1)(c)[321.235(3)], 321.320[321-240(5)], 321.441(7)[321.441(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c)[321-240(5)] requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. KRS 321.441(7) mandates that veterinary technicians pay an annual fee to the board as a condition of licensure. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement[those] fees for veterinary technicians. This administrative regulation also establishes reduced and waived fees for military servicemembers applying for a veterinary technician license.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Examination Fees for Veterinary Technicians. The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards

(AAVSB), its designee, or current test administrator.

Section 3. Application Fees for Veterinary Technicians.

(1) The application fee for a veterinary technician shall be fifty (50)[twenty-five (25)] dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

[Section 3.] [Examination Fees for Veterinary Technicians. The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards (AAVSB), its designee, or current test administrator.]

Section 4. Renewal Fees for Veterinary Technicians. The following fees shall be paid in connection with licensure renewals for veterinary technicians:

(1) The renewal deadline shall be September 30 of each year. The renewal period is the time period beginning the day after the renewal deadline to the next renewal deadline.

(2)[(a)] Except as provided by subsection (5)[paragraph (b)] of this section[subsection], the annual renewal fee for licensure as a veterinary technician in active status shall be as established in paragraphs (a)-(c) of this subsection[fifty (50)][thirty (30)][dollars if]:

(a) Until June 29, 2026, the renewal fee shall be \$40.

(b) Between June 30, 2026, and June 30, 2028, the renewal fee shall be \$45.

(c) After June 30, 2028, the renewal fee shall be \$50.

(3)[4.] The Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570 or online equivalent form shall be[is] complete, and include[including] all required attachments, continuing education credits, and fee payment; and

(4)[2.] The complete package shall be[is] submitted to the board for review and approval not later than September 30 of the renewal period.

(5)[(b)] For a veterinary technician who is initially licensed 120 days prior to the end of the renewal period, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(6)[(2)] Utilization of Renewal Grace Period.

(a) A sixty (60) day grace period shall be allowed after September 30, during which time the licensed veterinary technician who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board.

(b) The late fee for annual renewal shall be thirty (30)[fifty (50)][fifteen (15)] dollars in addition to the renewal fee as described in subsections (2) and (5)[Section 4(4)] of this section[administrative regulation].

(c) The veterinary technician shall submit the complete Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, including all required attachments, continuing education credits, and fee payment, to the board between October 1 and November 30.

(7)[(3)] A veterinary technician's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians.

(1)

(a) Except as provided by Section 6(3) of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration, a veterinary technician shall[may] pay a reinstatement fee of as established in subparagraphs 1-3 of this paragraph to reinstate their license to active status.[150.][fifty (50)-dollars][and]

1. Until June 29, 2026, the licensure reinstatement fee shall be ninety (90) dollars.

2. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be \$100.

3. After June 30, 2028, the licensure reinstatement fee shall be \$115.

(b) The applicant shall submit a complete Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:540 or online equivalent form, including all required attachments, to the board for reinstatement of ~~their~~[his-or-her] license.

(c)(b) A veterinary technician shall not apply for a new license during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinary technician shall apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of a License.

(1)

(a) A veterinary technician ~~shall~~[may] request inactive licensure status in accordance with 201 KAR 16:580.

(b) If more than ninety (90) days prior to the renewal deadline or more than 150 days prior to the grace period deadline, [Outside of a renewal window,] [If using] the Request for Licensure Status Change form ~~shall be required, and~~ there shall not be a fee.

(c) If less than ninety (90) days prior to the renewal deadline or less than 150 days prior to the grace period deadline, [During an open renewal window,] [If using] the Renewal Application for Veterinary Technicians form shall be required, and the required fee shall ~~paid~~[be] as established in subsection (2) of this section.

(2) Renewal of an inactive veterinary technician license.

(a) The annual renewal fee for inactive veterinary technician licensure status shall be ~~ten (10)~~[twenty-five (25)] [ten (10)] dollars per renewal period.

(b) The late fee for renewal of an inactive veterinary technician license shall be twenty-five (25) dollars in addition to the renewal fee as described in subsection (2)(a) of this section, and [The late fees established in Section 4(2) of this administrative regulation] shall apply to a veterinarian technician license in an inactive status that was [licenses] not renewed annually by September 30.

(c) A **veterinarian technician** license in an inactive status that is not renewed by November 30 shall be ~~moved to an~~[deemed to be] expired status.

(3) Reinstatement of inactive veterinary technician license status to active status.

(a) A licensed veterinary technician in inactive status may reinstate ~~their~~[his-or-her] license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee [of \$100] [twenty-five (25) dollars] due at the time of application, as provided for in subparagraphs 1.-2. of this paragraph.

1. For an inactive veterinary technician license that has been in inactive status less than twelve (12) months:

a. Until June 29, 2026, the licensure reinstatement fee shall be ninety (90) dollars.

b. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be \$100.

c. After June 30, 2028, the licensure reinstatement fee shall be \$115.

2. For an inactive veterinary technician license that has been in inactive status greater than twelve (12) months, the licensure reinstatement fee shall be seventy-five (75) dollars.

Section 7. Retirement of a Veterinary Technician License.

(1)

(a) A veterinary technician may request to retire ~~their~~[his-or-her] license at any time.

(b) The one-time fee for this service shall be ten (10) dollars, which shall be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580, Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, or online equivalent forms.

(2) Once a license is retired, it shall not be reactivated. If a veterinary technician holds a retired license and wishes to practice again, ~~they~~[he-or-she] shall apply to the board for a new license to practice the profession of a veterinary technician in the Commonwealth of Kentucky.

Section 8. Fee Reduction for Military Personnel.

(1) If a veterinary technician applicant submits a copy of ~~their current military orders or~~[his-or-her] DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall waive or reduce fees as indicated in this section.

(a)(4) For active duty military, active reserves, and National Guard service persons, an individual's initial application fees and annual renewal fees shall be waived.

(b)(2) For retired career military, an individual's initial application fees shall be waived, and the annual renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(c)(3) For any other military veteran, the initial application fees shall be waived.

(d)(4) All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall still be met.

(2) In conformity with federal Pub.L. No 117-333, if a veterinary technician applicant who is an active duty servicemember, or their spouse is an active duty servicemember, then all application fees to the board shall be waived when all of the following conditions are met:

(a) The servicemember, and the service member's spouse, if one exists, shall have their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinary technician shall hold at least one (1) license equivalent in scope in another United States jurisdiction;

(c) Within ninety (90) days of relocating, the veterinary technician shall register with the board on the Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:540 or online equivalent form, in conformity with 201 KAR 16:540, Section 1(4).

(d) The servicemember shall submit a copy of their current military orders to the board;

(e) All veterinary technician licensees held in any jurisdiction by the veterinary technician shall remain in good standing; ~~and~~

(f) In order to demonstrate compliance with the requirement of paragraph (e) of this subsection, the servicemember or their spouse shall submit an AAVSB VAULT report to the board; and

(g) The veterinary technician licensee shall submit to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for persons seeking a veterinary technician license from the board to gain the ability to practice veterinary technology in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinary technician licensure, as mandated in KRS 321.235(1)(c), 321.320, 321.441(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190, 321.441, and 321.442 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

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

clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep the board operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190, 321.441, and 321.442 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for licensure as a veterinary technician.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 592 veterinary technicians and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already

running an administrative program to process applications and to ensure compliance. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering of fees is applied to applications from U.S. military servicemembers. Pursuant to public law Public Law No 117-333, the board provides reduced or waived fees for active duty military. Discharged and retired military servicemembers are also provided reduced or waived fees associated with licensure as a veterinary technician.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235(1)(c), 321.320, 321.441(7)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$25,000 on an annual basis.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$25,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$25,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new veterinary technician license, renew or reinstate, pay late fees, maintain an inactive license, or retire a veterinary technician license. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in

subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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

Cost Savings (+/-): None.

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

BOARDS AND COMMISSIONS **Board of Veterinary Examiners** **(Amended After Comments)**

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

RELATES TO: KRS 321.200(1)(p), 321.207, 321.208, 321.235
STATUTORY AUTHORITY: KRS 321.207, 321.208,
321.235(1)(c)[321.235(3)], 321.320[321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) authorizes the Kentucky Board of Veterinary Examiners to permit qualified animal control agencies in the Commonwealth of Kentucky to apply for a registration certificate from the United States Drug Enforcement Administration (DEA) to purchase, manage, and utilize the specific drugs approved by the board for the purpose of euthanizing[euthanize] animals. KRS 321.207(4)[321.207(3)] authorizes the board to issue certificates to those persons who are deemed to be qualified to work as animal euthanasia specialists. KRS 321.235(1)(c)[321.240(5)] authorizes the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for animal control agencies and animal euthanasia specialists.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees.

(1) The application fee for issuance of a board certificate authorizing an animal control agency to apply for a restricted controlled substance registration with the United States Drug Enforcement Administration (DEA) shall be \$300[fifty (50) dollars]. The fee shall be attached to the completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:550 or online equivalent form, including all required attachments. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, Section 1(3) prior to the issuance of a certificate.

(2) The application fee for a certified animal euthanasia specialist shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:560 or online equivalent form, including all required attachments.

Section 3. Renewal Fees for Animal Control Agencies.

(1) **The renewal deadline shall be March 1 of each year. The renewal period is the time period beginning the day after the renewal deadline to the next renewal deadline.**

(2)[(a)] Except as provided by subsection (4)[paragraph (b)] of this section[subsection], a certified animal control agency shall annually[, on or before March 1,] pay to the board a renewal fee as established in paragraphs (a)-(c) [of] \$300[fifty (50) dollars] for the renewal of the certificate.

(a) Until June 29, 2026, the renewal fee shall be \$90.

(b) Between June 30, 2026, and June 30, 2028, the renewal fee shall be \$115.

(c) After June 30, 2028, the renewal fee shall be \$150.

(3) The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment to the board.

(4)[(b)] The renewal fee for the first renewal shall be waived for a certificate issued 120 days prior to the end of the renewal period.

(5)[(2)] Utilization of Renewal Grace Period.

(a) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency may continue to function as though certified until a late renewal application is submitted to the board.

(b) The late fee for renewal shall be seventy-five (75) dollars[\$100][ten (10) dollars] in addition to the renewal fee as described in Section 3(2)[Section 3(1)] of this administrative regulation. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(c) The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment, to the board between March 2 and April 30 of the grace[annual renewal] period.[The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.]

(6)[(3)] An animal control agency restricted controlled substance registration certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(7)[(4)] If not more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency that has an expired restricted controlled substance registration certificate may be reinstated upon the submission of a completed Reinstatement Application for Animal Control Agencies form as found in 201 KAR 16:550 or online equivalent form, including all attachments, and the payment of a reinstatement fee of \$300[\$600][seventy-five (75) dollars]. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, Section 5[Section 1(3)] prior to the reinstatement of a certificate. An animal control agency shall not apply for a new certificate during this five (5) year window; a reinstatement application shall be required.

(8)[(5)] If more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency shall reapply to obtain a board certificate authorizing restricted controlled substance registration with the DEA.

Section 4. Renewal Fees for Animal Euthanasia Specialists.

(1) **The renewal deadline shall be March 1 of each year. The renewal period is the time period beginning the day after the renewal deadline to the next renewal deadline.**

(a) Except as provided by paragraph (b) of this subsection, a certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572 or online equivalent form, including all required attachments, and fee payment to the board.

(b) The renewal fee for the first renewal shall be waived for a certificate issued 120 days prior to the end of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the certified animal euthanasia specialist may

continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ~~fifty (50)~~~~[ten (10)]~~ dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572 or online equivalent form, including all required attachments and fee payments, to the board between March 2 and April 30 of the renewal period. The late fee for renewal, if applicable, shall not be reduced without board authorization.

(3) An animal euthanasia specialist certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal euthanasia certificate that has expired may be reinstated upon the submission of a completed Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:560 or online equivalent form, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal euthanasia specialist shall not apply for a new certificate during this five (5) year window; a reinstatement application shall be required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an individual shall reapply to obtain a certificate as an animal euthanasia specialist in the Commonwealth of Kentucky.

Section 5. Inactive Status for Animal Euthanasia Specialists.

(1)

(a) A certified animal euthanasia specialist may request or be moved to inactive licensure status in accordance with 201 KAR 16:580. There shall not be a fee.

(b) There shall not be a renewal fee for a certified animal euthanasia specialist with inactive licensure status.

(2)

(a) A certified animal euthanasia specialist ~~shall~~~~[may]~~ reinstate ~~their~~~~[his or her]~~ certificate to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of fifty (50) dollars only if the certificate was placed in inactive status as a result of:

1. The certificate holder's request; or

2. By severing employment with the affiliated animal control agency on record with the board.

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for animal shelters seeking an animal control agency certificate from the Kentucky Board of Veterinary Examiners (KBVE) to obtain a controlled substance registration from DEA, and for persons seeking an animal euthanasia specialist certificate from the board to gain the ability to euthanasia stray, homeless, and injured animals in Kentucky in an effort to control the pet population in counties and municipalities.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for certificate holders of animal control agencies and animal euthanasia specialists, as mandated in KRS 321.207, 321.208, 321.235(1)(c), 321.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.207, 321.208,

and 321.235(1)(c) specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep all mandated board programs operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also enable the board to implement new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.207, 321.208, and 321.235(1)(c) specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for certification as an animal control agency and as an animal euthanasia specialist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 animal control agencies, 230 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to certification, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application and renewal

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings. The board does not

receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE), and Kentucky counties and municipalities who own or contract with a KBVE-certified animal control agency and the employees of such certified agencies that are certified to euthanize animals.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, 321.208, 321.235(1)(c), 321.320

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$25,000 on an annual basis.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$25,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$25,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to apply for a new animal control agency certificate, as well as the cost to renew or reinstate the certificate and the cost of late fees. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have

increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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

Cost Savings (+/-): None.

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amended After Comments)

201 KAR 16:516. Fees – other fees.

RELATES TO: KRS 321.235(1)(c)[321.240, 321.204]

STATUTORY AUTHORITY: KRS 321.235(1)(c)[321.204(1), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c)[321.240(5)] authorizes the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. [~~KRS 321.204(1) authorizes the board to issue a special permit for the practice of veterinary medicine and to require a fee for the permit.~~] This administrative regulation establishes fees for various services provided by the board [~~and the fee for a special permit~~].

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. [Fees for Special Permits.]

[(1)] [The fee for a special permit issued by the board pursuant to KRS 321.204 shall be fifty (50) dollars.]

[(2)] [The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530 or online equivalent forms.]

[Section 3.] Fees for License Verification Letters and Letters of Good Standing.

(1) The fee for a license verification letter or a letter of good standing shall be thirty (30)[~~ten (10)~~] dollars per jurisdiction per request.

(a) Except as provided for in paragraph (b) of this subsection, the fee shall be attached to a Request for Licensure Verification form or online equivalent form.

(b) The board may accept orders for licensure verification letters without the required form from the American Association of Veterinary State Boards (AAVSB) on behalf of

licensees requesting the letter through the AAVSB VAULT Transfer program, billed by invoice on a periodic basis at the same rate as individual requests.

(2) Upon receipt of the request and payment, the board shall issue the requested letter and complete any forms required by regulatory bodies in other jurisdictions.

Section 3. [Section 4.] Fees for Board Credential Holder Mailing Lists.

(1)

(a) The fee for a request to obtain a copy of the mailing list for a commercial purpose [of the board's licensees] shall be sixty (60) [fifteen (15)] dollars.

(b) The fee for a request to obtain a copy of the mailing list for a non-commercial purpose shall be thirty (30) dollars.

(c) The board shall not charge a fee to obtain a copy of the mailing list for the first three (3) requests in a calendar year to the Kentucky Veterinary Medical Association (KVMA), ~~or~~ its constituent in-state VMAs, or Kentucky state universities.

(2) The fee shall be attached to a Request for Mailing List form or online equivalent form.

(3) [(2)] Within thirty (30) calendar days of [Upon] the receipt of the request and payment, the board shall send a current credential holder [licensee] mailing list to the requesting party.

Section 4. [Section 5.] Fees for Duplicate Wall Certificates and Laminated Credentials.

(1) The fee for a duplicate wall certificate, including the board's seal, ~~[or a new laminated wallet-sized card,]~~ shall be thirty (30) [ten (10)] dollars.

(2) The fee for a new laminated wallet-sized card shall be thirty (30) dollars.

(3) The fee shall be attached to a Request for Printed Credentials form or online equivalent form.

Section 5. Request for Continuing Education Approval. The fee for an applicant to obtain board approval as Approved program of continuing education shall be fifty (50) dollars paid directly to the board and attached to the Request for Continuing Education Approval form as found in 201 KAR 16:590 or online equivalent form.

Section 6. Fees for Processing Payments.

(1) The board may require a reasonable service charge for processing any payments submitted online or in paper form. The fees shall be calculated as a percentage of the underlying fee and shall not be higher than the board's current contracted rate for payment processing services.

(2) Service charge fees shall be non-refundable.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Request for Licensure Verification", 8/2023[2/2020];

(b) "Request for Mailing List", 8/2023[2/2020]; ~~and~~

(c) "Request for Printed Credentials", 8/2023[3/2020]; and

(d) "Request for Continuing Education Course Approval", 8/2023.

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

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for services provided from the Kentucky Board of Veterinary Examiners (KBVE), including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves additional services, as mandated in KRS 321.235(1)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.235(1)(c), specifically require the board to charge fees for services provided by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321; updating fees which have only minimally changed in nearly 30 years to ensure that the board remains operational, efficient, and responsive to both the public and credential holder needs. These changes also assist the board in implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep the board operational, and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations. These changes also assist the board in implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.235(1)(c), specifically require the board to charge fees for services provided by the board, including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with services provided by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,680 veterinarians, 592 veterinary technicians, future applicants, and former credential holders.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to the KBVE providing services for licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for administered services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(b) On a continuing basis: The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. The board does not receive any general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to provide these services. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners (KBVE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235(3), 321.240(5)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will generate approximately \$18,000 on an annual basis.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$18,000 on an annual basis.

(c) How much will it cost to administer this program for the first year? This is not a new program. The KBVE expects costs for all board operations to be approximately \$575,000 annually in the near term.

(d) How much will it cost to administer this program for subsequent years? The board expects costs for all board operations to be approximately \$750,000 annually in the future as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

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

Revenues (+/-): +\$18,000 annually

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full

year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be additional costs involved to request services from the board, including licensure verification to other jurisdictions, printed credentials, review of requests to approve continuing education courses, and processing fees for online transactions. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(d) How much will it cost the regulated entities for subsequent years? The costs established in this regulation will be consistent in subsequent years. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs for the board have increased, and it is necessary to raise fees to continue operations.

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

Cost Savings (+/-): None.

Expenditures (+/-): -\$750,000 annually

Other Explanation: Additional expenses are anticipated by the KBVE

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amended After Comments)

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

RELATES TO: KRS 217.177(1), (4), Chapter 258, Chapter 301, 321.207, 321.351

STATUTORY AUTHORITY: KRS 321.207(1) – (3),(5)-(8), 321.235(1)(a), (b), (2)(b)3[(1), (2), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish standards for the procurement, management, and disposal of drugs[~~proper storage and handling of the drugs~~] the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(1)(a), (b), and (2)(b)3[KRS 321.235(3) and 321.240(5)] authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the application, renewal, and reinstatement requirements for certification of an animal shelter as

an animal control agency, and the requirements for board inspections at certified animal control agencies.

Section 1. Definitions.

(1) "Animal Control Agency" means an animal shelter fulfilling the duties required pursuant to KRS Chapter 258, and the animal shelter is either owned, contracted with, or in service on behalf of a county or municipality.

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

(b) An "animal shelter" shall not include:

1. Shelter or care of wildlife; or

2. Premises of a Kentucky Department of Fish and Wildlife Resources credentialed:

a. Certified wildlife rehabilitator (301 KAR 2:075);

b. Commercial nuisance wildlife control operator (301 KAR 3:120);

c. Captive wildlife holder (301 KAR 2:081);

d. Wildlife transporter (301 KAR 2:082).

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

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

(5) "Dispose" in relation to drugs means to destroy or transfer.

(6) "Manage" in relation to drugs means to administer, dispense, or inventory.

(7) "Procure" in relation to drugs means to order, purchase, or receive."

Section 2. Application and Renewal Requirements.

(1) The applicant animal shelter shall apply to the board for authorization to operate as a certified animal control agency and to apply to the federal Drug Enforcement Administration (DEA) for a Controlled Substance Registration as established by KRS 321.207.

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

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

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

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

(d) An animal control agency verification letter signed by the governing body within the county or municipality, including a statement about the animal shelter's role as an animal control agency or contractor pursuant to KRS 258.195;

(e) A list of all Kentucky counties which are provided service by the animal shelter; and

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

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

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

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

(6) A certified animal control agency shall identify a designated on-site manager in accordance with 201 KAR 16:552.

(a) The agency shall notify the board in writing within ten (10) days of any change in the designated on-site manager of the certified animal control agency[animal shelter] by submitting a completed Request for a New Designated On-site Manager form or

online equivalent form, including all required attachments.

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

(7) Background checks. Pursuant to KRS 321.189, the board may:

(a) Conduct[conduct] a national or jurisdictional level background check on each designated on-site manager. The check shall be processed by a board approved background check provider, and may include a copy of the designated on-site manager's fingerprints captured at a board approved location;[.]

(b) Accept[The board may accept] the results of a state-wide[an] employment background check [from the county office] in lieu of a state or federal background check if the background check results are not more than ninety (90) days[six (6) months] old from the date of application;[.]

(c) Reject[The board may reject] background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and[.]

(d) Impose[The board may impose] additional administrative or safety requirements as a condition of certification for the animal control agency or deny certification following the board's review of findings from a background check.

Section 3. Renewal Requirements for a Certified Animal Control Agency.

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

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

(a) The animal control agency certificate shall be moved to expired status;

(b) Each "active" status certified animal euthanasia specialist under the employment of the expired certified animal control agency shall be moved to "inactive" status;

(c) The DEA shall be notified of the lapse in certification; and

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

Section 4. Reinstatement Requirements for Certified Animal Control Agencies.

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

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

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

Section 5. Inspection Requirements.

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

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

(3) An inspection shall be required:

(a) Prior to the approval of a new Application for Certification as

an Animal Control Agency;

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

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

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

(e) Under suspicion of probable cause for violation of KRS Chapter 321 or 201 KAR Chapter 16; and

(f) Following the expiration, termination, suspension, or surrender of the certificate in accordance with Section 3(2)(d) of this administrative regulation.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Control Agency", 7/2023[12/2022];

(b) "Reinstatement Application for Animal Control Agencies", 7/2023[12/2022]; and

(c) "Request for a New Designated On-site Manager", 7/2023[12/2022].

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

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and renewal requirements for certification as an animal control agency, and the requirements for board inspections at certified animal control agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application requirements for certification as an animal control agency, as mandated by KRS 321.207.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to the application requirements for certification as an animal control agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing board expectations for applications and renewals of board-issued certificates for animal control agencies, and requirements related inspections of board-certified animal control agencies.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312; adding clarifying definitions, clarifying that eligible animal shelters should have a mission to support the county or municipality with their in animal control needs, and clarifying that animal shelters eligible for a KBVE certificate do not include the handling, management, and transport of wildlife, because wildlife management falls under the scope of the Kentucky Department of Fish and Wildlife Resources.

(b) The necessity of the amendment to this administrative

regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary to prevent application for wildlife shelter certification to the board, because wildlife control and management is beyond the board's scope of authority, and instead is under the scope of the Kentucky Department of Fish and Wildlife Resources.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies, including who is eligible to apply and the application requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about who is eligible to apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any impact to currently regulated entities. This amendment shall ensure that those who are not qualified to apply do not pay a fee and then have their application denied 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): This amendment will save potential applicants money by clarifying who is eligible for KBVE certification as an animal control agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners and KBVE-certified county animal shelters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, KRS 321.235

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not a new program.

(d) How much will it cost to administer this program for subsequent years? Staff time is required for record keeping. Costs will be very minimal.

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

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

BOARDS AND COMMISSIONS **Board of Veterinary Examiners** **(Amended After Comments)**

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

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

STATUTORY AUTHORITY: KRS 321.207(1) – (3), (5)-(8), 321.235(1)(a), (b), (2)(b)3(1), (2), 321.235(3), 321.240(5)

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

regulation establishes the duties for the animal control agency designated on-site manager, standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ.

Section 1. Definitions.

(1) "Dispose" in relation to drugs means to destroy or transfer.

(2) "Manage" in relation to drugs means to administer, dispense, or inventory.

(3) "Procure" in relation to drugs means to order, purchase, or receive.

Section 2. Responsibilities of a Certified Animal Control Agency. A certified animal control agency shall:

(1) Ensure[A certified animal control agency and] staff shall comply with all requirements of KRS Chapter 321 and 201 KAR Chapter 16.

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

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

(4) Notify the board in writing within ten (10) business days following the termination or severance of employment of a certified animal euthanasia specialist in order that the certificate of the animal euthanasia specialist may be moved to inactive status.

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

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

(7) Report to the board and to DEA within twenty-four (24) hours any suspected diversion of controlled substances or theft of controlled substances.

Section 3.[Section 2.] Responsibilities of a Designated On-site Manager.

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

(2) The designated on-site manager shall:

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

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

(c) Ensure all employees authorized to conduct animal euthanasia at the certified animal control agency are trained and certified in accordance with the requirements of 201 KAR 16:560 and 16:562, unless the employee is a board-licensed veterinarian or board-licensed veterinary technician;

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

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

(f) **Develop[Shall develop]** and maintain standard operating procedures in writing for carcass disposal in accordance with all

state and local laws and ordinances; ~~and~~

(g) Ensure that a designated area is provided for animal euthanasia activities, and that the area is kept clean and orderly, and is maintained as a safe workspace;

(h) Ensure that drugs ordered under DEA Registration held by any person or entity other than the certified animal control agency are kept in separate secure storage pursuant to KRS 321.207(8); and

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

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

(a) Euthanasia shall only be conducted upon animals owned by the certified animal control agency, except in cases of emergency care as defined by KRS 321.181(33)~~[KRS 321.181(10)]~~.

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

2. Wildlife shall be redirected to one (1) of the following:

a. A~~a~~ board-licensed veterinarian; ~~;~~

b. A Certified Wildlife Rehabilitator authorized to operate pursuant to 301 KAR 2:075; ~~or~~

c. A Commercial~~to a~~ Nuisance Wildlife Control Operator authorized to operate pursuant to 301 KAR 3:120;

d. A Captive Wildlife Holder authorized to operate pursuant to 301 KAR 2:081; ~~or~~

e. A Wildlife Transporter authorized to operate pursuant to 301 KAR 2:082;

f. KDFWR wildlife biologist; or

g. KDFWR conservation officer.

(b) Euthanasia shall only be conducted upon the premises of the certified animal control agency, except in cases of emergency care as defined by KRS 321.181(33)~~[KRS 321.181(10)]~~; and

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

Section 4.~~[Section 3.]~~ **Authorized**~~[Approved]~~ Drugs for Animal Euthanasia and Anesthesia or Sedation of Animals Prior to Euthanasia.

(1) A certified animal control agency shall be restricted to the purchase of only sodium pentobarbital~~[the following board-approved specific drugs]~~ for the purpose of animal euthanasia. ~~[The drugs approved by the board for euthanasia are:]~~

[(a) Sodium pentobarbital; and

(b) Sodium pentobarbital with lidocaine.]

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

(a) Acepromazine;

(b) Dexmedetomidine;

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

(d) Xylazine.

(3) Scheduled drugs (controlled substances) shall be limited to a thirty (30) day supply, or the smallest quantity available for purchase if that quantity is greater than a thirty (30) day supply.

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

~~(5)~~~~[(4)]~~ Expired drugs.

(a) Expired drugs shall not be used.

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

Section 5.~~[Section 4.]~~ Storage.

(1) Board authorized~~[approved]~~ euthanasia and sedation drugs shall be stored at the DEA address of record for the certified animal control agency in a secure steel safe or securely locked steel cabinet within;

~~(a) A~~~~[a]~~ locked storage room; ~~or~~

~~(b) Other locked~~~~[other]~~ enclosure; ~~and~~~~[at the DEA address of record for the certified animal control agency.]~~

~~(c) If the cabinet weighs less than 750 lbs, the~~~~[The]~~ cabinet shall be bolted securely to the floor or wall.

(2) DEA Controlled Substance Schedule II order forms shall be maintained at the DEA address of record for the certified animal control agency~~[stored]~~ in a securely locked cabinet that is:

~~(a) Separate~~~~[separate]~~ from the storage location of the drugs; ~~or~~

~~(b) Within~~~~[within]~~ a locked storage room; or

~~(c) Other locked~~~~[other]~~ enclosure~~[at the DEA address of record for the certified animal control agency].~~

Section 6.~~[Section 5.]~~ Disposal of Needles and Medical Waste.

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

(a) Not be accessible to the public;

(b) After one (1) use, be rendered incapable of re-use~~[use]~~; and

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

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

Section 7.~~[Section 6.]~~ Records.

(1) A certified animal control agency shall maintain records of procurement, management, and disposal~~[purchases, administration]~~ of board authorized~~[board approved]~~ euthanasia drugs and sedation drugs as listed in Section 3 of this administrative regulation~~[- transfer, and destruction of drugs]~~ for a minimum of two (2) years.

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

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) Any amount wasted;

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

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

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

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

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

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

Section 8.~~[Section 7.]~~ Destruction or Disposal of Drugs. Drugs at an animal control agency that require disposal shall be disposed of in accordance with one (1) of the methods set forth in this section. A written receipt with appropriate signatures shall be obtained for the methods in subsections (1) through (3) of this section, and a record of the action taken shall be made for the method in subsection (4) of this section. The record shall be maintained with the drug logs at the animal control agency.

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

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

(3) Surrender expired or non-expired drugs to local law

enforcement for destruction.

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

Section 9.[Section 8.] Disciplinary Action. An animal control agency, designated on-site manager, and ~~[credentialed]~~ animal euthanasia specialists shall be subject to disciplinary action pursuant to KRS 321.235 and 321.351 for a violation of state or federal statutes or administrative regulations.

Section 10.[Section 9.] Incorporation by Reference.

(1) "Request for a New Designated On-site Manager", ~~07/2023~~~~[12/2022]~~, is incorporated by reference.

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

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes, for Board-certified animal control agencies, the standards for proper drug storage, limitations on the drugs that may be used by the agencies and the certified animal euthanasia specialists they employ, limitations on the animals on which the drugs may be used so that the specialists do not practice veterinary medicine outside the scope allowable by the General Assembly. In addition, this regulation outlines the responsibilities of the agency's Designated On-site Manager, who is in charge of controlled substances, including drug storage requirements, record keeping requirements, and limitations on options for the methods used for the destruction of drugs and sharps.

(b) The necessity of this administrative regulation: As mandated by the General Assembly in KRS 321.207, this administrative regulation is necessary to establish the drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ, and standards for proper drug storage and handling.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations for board-certified animal control agencies limiting the type of drugs allowable for use by certified animal control agencies and the certified animal euthanasia specialists they employ, and establishing standards for proper drug storage and handling.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing limitations on the operations of certified animal control agencies so that they do not exceed their operating scope as authorized by the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312; adding additional options for the redirection of wildlife; adding limitations on the office stock for all controlled substances; and

formatting the requirements so they are easier for constituents to understand.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary to place strict limits on the supply of controlled substances in a certified animal control agency, and provide additional options to redirect wildlife.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies, including requirements for storage and limitations on drugs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the requirements for allowable drugs, as well as their storage, maintenance, and use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All board-certified animal control agencies shall be required to ensure adequate locked and secure storage for the management of controlled substances onsite, and limit their supply of controlled drugs to those listed by board in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Board-certified animal control agencies should already be properly ordering, storing, and managing controlled drugs as a part of requirements established by the Drug Enforcement Administration (DEA), so there should not be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, entities should reduce break-ins and thefts of controlled substances, as well as be able to more easily comply with DEA Requirements related to drug record keeping. Animal Control Agencies should also reduce their liability to the public by limiting their scope of practice for board-certified euthanasia specialists, ensuring sharps are properly disposed of, and ensuring proper carcass disposal in compliance with local laws.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners and board-certified animal control agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207(1) – (3), (5)-(8), 321.235(1)(a), (b), (2)(b)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? No revenue will be generated from this filing. An animal control agency may need to expend monies to ensure adequate storage for controlled substances management.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this administrative regulation simply codifies the requirements of drug management and establishes limitations on drug administration, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? An animal control agency may need to expend monies to ensure adequate storage for controlled substances management. There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amended After Comments)

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

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

STATUTORY AUTHORITY: KRS 321.207(4)-(7), 321.235(1)(a), (b), (2)(b)3~~[(3), 321.235(3), 321.240(5)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the Kentucky Board of Veterinary Examiners to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. KRS 321.235(1)(a), (b), and (2)(b)3.~~[KRS 321.235(3) and 321.240(5)]~~ authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist, renewal, and reinstatement requirements, and the required course contents for the euthanasia by injection training each applicant is required to receive.

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

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

Section 2. Euthanasia by Injection (EBI) Training Course Curriculum.

(1) The curriculum for the sixteen (16) hour EBI course shall provide information on the following subjects:

- (a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;
- (b) Federal and state laws regulating the procurement, management, and disposal~~[storage and accountability]~~ for euthanasia drugs~~[solutions]~~ and sedation drugs used to assist in euthanasia;
- (c) Euthanasia specialist stress management and compassion fatigue;
- (d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and
- (e) Disposal of euthanized animals.

(2) An EBI training course shall be reviewed and approved by the board prior to presentation. A provider of an EBI training shall submit the following information to the board for consideration of approval:

- (a) A published course or similar description;
- (b) Names and qualifications of current instructors;
- (c) A copy of the program agenda indicating hours of education, refreshment, and lunch breaks;
- (d) A copy of the full program curriculum;

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

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

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

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

(1) A completed application on an Application for Certification as an Animal Euthanasia Specialist form or online equivalent form, including all required attachments;

(2) An official copy of final transcripts or a copy of the applicant's diploma from high school, or GED certificate, or other highest level of education attained;

(3) A copy of a certificate of completion from a board approved sixteen (16)-hour euthanasia by injection training course; and

(4) Payment for the application fee pursuant to 201 KAR 16:514.

Section 4. Renewal Requirements for a Certified Animal Euthanasia Specialist[Control Agency].

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

(2) Failure to renew the certificate for an animal euthanasia specialist[control agency] shall result in expiration of the certificate.

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

(1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form or online equivalent form, including all required attachments;[and]

(2) Payment for the application fee pursuant to 201 KAR 16:514; and

(3) Proof of certification in the 16-hour euthanasia by injection training course pursuant to Section 1(7).

Section 6.[Section 5.] An application to the board for approval for a change in certification[license] status shall be made in accordance with 201 KAR 16:580.

Section 7.[Section 6.] Background Checks. Pursuant to KRS 321.189, the board may:

(1) Conduct[conduct] a national or jurisdictional level background check on each applicant for certification. The check shall be processed by a board approved background check provider, and may include a copy of the applicant's fingerprints captured at a board approved location;[-]

(2) Accept[The board may accept] the results of a state-wide[an] employment background check [from the county office] in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application;[-]

(3) Reject[The board may reject] background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and[-]

(4) Impose[The board may impose] additional administrative or safety requirements as a condition of certification or deny certification following the board's review of findings from a background check.

Section 8.[Section 7.] Employment and Termination.

(1) A person may function as a certified animal euthanasia specialist only while the person remains employed by a board-

certified animal control agency in the Commonwealth of Kentucky.

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

Section 9.[Section 8.] Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235 and 321.351 for a violation of state or federal statutes or administrative regulations.

Section 10.[Section 9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Euthanasia Specialist", 07/2023[3/2023]; and

(b) "Reinstatement Application for Animal Euthanasia Specialists", 07/2023[12/2022].

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

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, renewal, and reinstatement requirements for certification as an animal euthanasia specialist, as well as details on the required training needed to qualify for certification, and background check requirements.

(b) The necessity of this administrative regulation: As mandated by KRS 321.207, this administrative regulation is necessary to establish the application, renewal, reinstatement, and training requirements for certification as an animal euthanasia specialist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to the application and training requirements for board-certification as an animal euthanasia specialist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly detailing requirements for application, renewal, and reinstatement of the board-issued animal euthanasia specialist certificate, as well as the training course required for eligibility of certification.

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

(a) How the amendment will change this existing administrative regulation: Clarifies renewal requirements, and adds detail about requirements for the EBI course. Reorganizes section on background checks.

(b) The necessity of the amendment to this administrative regulation: The Kentucky Board of Veterinary Examiners has determined this amendment is necessary in response to issues discovered at certified animal control agencies during periodic

shelter inspections. Issues include high staff turnover, and sometimes expired staff certificates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies and the animal euthanasia specialists they employ. This amendment clarifies renewal requirements and details on the EBI training requirements, as well as organizes the section on background checks.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparent standards to ensure compliance related to certification requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements in this amendment. Applicants for certification as an animal euthanasia specialist shall be required to submit application materials as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a minimal application fee for processing, as established in 201 KAR 16:514.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners and KBVE-certified county animal shelters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207(4)-(7), 321.235(1)(a), (b), (2)(b)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? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No

revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amended After Comments)

201 KAR 16:701. Standards for medical records.

RELATES TO: KRS 257.080, 258.043, 258.065, 321.175, 321.181, 321.185, 321.187, 321.188, 321.200

STATUTORY AUTHORITY: KRS 321.175[.], 321.187, 321.235(2)(b)3.c.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect ~~the~~ public health, safety, and welfare. KRS 321.235 allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to establish standards in medical records. This administrative regulation establishes standards for medical records created for animal patients by board credential holders.

Section 1. Definitions.

(1) "Clinical encounter" means an interaction between a patient, client, and a healthcare provider for the purpose of providing healthcare services or assessing the health status of a patient; it is the point at which decisions about diagnosis and treatment are made, and during which caring takes place.

(2) "Complete medical record" means the record contains sufficient information to:

(a) Identify the patient and the client;

(b) Support the diagnosis or condition;

(c) Justify the care, treatment, and services;

(d) Provide options for spectrum of care, where appropriate;

(e) Document the course and results of care, treatment, and services; and

(f) Promote continuity of care among providers. A medical record shall be completed no more than forty-eight (48) hours following the clinical encounter.

Section 2. Veterinary medical records shall be:

(1) Safeguarded against loss, tampering, or use by unauthorized persons;

(2) Be readily available to the veterinarian, other veterinarians at the same practice, employees of the veterinarian, and other authorized persons; and

(3) Contain sufficient information to permit any veterinarian to proceed with the care and treatment of the patient by reading the medical record.

Section 3.~~[Section 2.]~~ Maintenance of Records.

(1) The practice where the records were prepared shall be the official records custodian.

(2) Original patient records shall be retained by the practice, veterinarian, or allied animal health professional (AAHP)~~[AAHP]~~ who prepared them and be readily retrievable for a period of five (5) years following the last patient encounter. Cessation from practice, either temporarily or permanently, does not relieve the practitioner from compliance with this section.

~~(3)[(a) Records shall not be stored by a third party without a record of signed, informed consent by the client.~~

~~(b)]~~ Records stored by a third party shall not relieve the veterinarian or AAHP from the responsibility of supplying records to the client upon request.

(4)(a) The veterinarian or AAHP permittee may require that a request for medical records be in writing and may charge a reasonable fee for copying or the staff time in preparing the requested medical records.

(b) In the event of a board investigation, no charges shall be authorized.

(c) Copies of the medical records shall be provided to the client, designated veterinarian, AAHP permittee, or authorized representative within seven (7) calendar days after receipt of a proper request or sooner in accordance with the patient's medical condition.

(d) Failure to provide the medical records in a timely fashion upon proper request shall be considered unprofessional conduct.

(5) Pursuant to KRS 321.187(2), records shall be retained and accessible to the client for five (5) years past the date of the last clinical encounter with the patient.

Section 4.~~[Section 3.]~~ Veterinary medical records shall include the following information at a minimum:

(1) Patient or herd identification;

(2) Client identification;

(3) A record of every clinical encounter and consultation regarding the patient;

(4) Written or digital records and notes of each clinical encounter, including:

(a) Diagnosis or differential diagnosis;

(b) Treatments recommended, including spectrum of care options;

(c) Treatment plan agreed upon with client;

(d) If a prescription is issued, prescription details consistent with the requirements of 201 KAR 16:600;

(e) Recommendations;

(f) If a medical determination is made via telemedicine, a written statement about the digital information used to make the decision;

(g) If surgery is performed, details of surgery, including:

1. Amounts and duration of any drugs, sedatives, or other substances administered;

2. Documentation of appropriate, species-specific anesthetic monitoring, which may include temperature, pulse, and respiration; and

3. Documentation of recovery;

4. Materials used~~[-and the amounts so used]~~, including at a minimum:

a. Suture materials;

b. Mesh materials; and

c. Other materials used; and

(h) Any other pertinent details.

~~(5) Laboratory[Radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory] reports;~~

(6) Any information received as the result of a consultation, including the date, name, and contact information of the consultant;

(7) A reference notation of the existence of radiographs, sonographic images, video recordings, photographs, or other diagnostic imaging, with ready access to or copies of those images available;

~~(8) Any authorizations, details of conversations, releases, waivers, patient discharge instructions, records of informed consent, or other related documents;~~

~~(9)[(8)]~~ The first and last name of the veterinarian, licensed veterinary technician, or veterinary assistant, or AAHP[allied animal health professional (AAHP)] permit holder practicing on the patient during the visit, whether in-person or via telehealth, or an identifying code that corresponds to the first and last name of the practitioner or person making the entry pursuant to subsection (12);~~[-and]~~

~~(10)[(9)]~~ The first and last name of the person making each entry in the medical record, or an identifying code for each person pursuant to subsection (12);

(11) The name of the veterinary facility or premises where the clinical encounter took place; and

(12) When an identifying code is used to denote the first and last name of the person making an entry into the medical record, a list of identifying codes and corresponding first and last names shall be made readily available with the medical records to the client or the board upon request.

Section 5.~~[Section 4.]~~

(1) A person shall not:

(a) Intentionally create a false record;

(b) Make a false statement; or

(c) Alter or modify any medical record, document, or report concerning treatment of a patient.

(2) When correcting a completed medical record for a clinical encounter, the original content shall be readable, and the alteration shall be clearly identified with the:

(a) Correction,

(b) Reason for the correction,

(c) Date of correction, and

(d) First and last name of the person making the correction, or an identifying code pursuant to Section 4(12).

Section 6.~~[Section 5.]~~ Rabies clinics.

(1) During each rabies clinic held pursuant to KRS 258.043, copies of medical records shall be retained for each patient clinical encounter beyond the rabies vaccination.

(2) For rabies vaccinations only, a copy of the rabies certificate satisfies the requirement of this section.

Section 7.~~[Section 6.]~~

(1) Pursuant to KRS 321.187, an animal patient's medical record and medical condition is confidential and may not be furnished to or discussed with any person other than the client or other veterinarians, veterinary technicians, veterinary assistants, veterinary practice staff (including veterinary students, veterinary technician students, and special permittees), AAHP permittees, or consultants involved in the care or treatment of the patient, except upon written authorization of the client or under the following circumstances:

(a) In response to a court order, or subpoena with notice given to the client or the client's legal representative;

(b) For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the patient and the client;

(c) As part of an inspection or investigation conducted by the board or an agent of the board;

(d) To verify the rabies vaccination status of an animal to law enforcement or local health department officials;

(e) In the course of a consultation as defined in KRS 321.181(24) or provided for in KRS 321.200(1)(f);

(f) In cases of animal abuse, pursuant to KRS 321.188;

(g) Pursuant to KRS 321.185(4)(b)3., in cases of reportable diseases as they relate to public or animal health pursuant to KRS 257.080 and 258.065 and the administrative regulations promulgated under the authority of those chapters;

(h) Access to the records is specifically required by other state or federal law; and

(i) Upon request by the board.

(2)(a) For purposes of written authorization from the client, nothing in this section shall require a veterinarian whose records are being authorized to be released to the client only to provide medical records, reports, and opinions to a client that may be used by a third party who does not have a veterinarian-client-patient relationship with the veterinarian for the purpose of, or in consideration of, the buying or selling of the animal.

(b) A veterinarian taking radiographs ~~of a patient~~~~for an animal~~ shall only be liable to the ~~client~~~~[owner of the animal]~~ for the content of the record, and not liable to third parties for the purpose of buying or selling of the animal.

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards regarding the contents of medical records for animal patients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standard protocols and procedures for credential holders of the board to create, maintain, and share medical records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the expectations for the contents of a patient's medical records.

(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: 2,690 veterinarians, 590 licensed veterinary technicians, 50 animal control agencies, and 232 animal euthanasia specialists, an unknown number of allied animal health professionals (AAHP), and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons identified in question (3) are required to keep and maintain animal patient medical records for a period of five (5) years. This new administrative regulation establishes the requirements for the contents of the records, ensuring transparency of board expectations and standardizing medical records in order to assist in patient care and welfare. Identified persons will need to ensure they capture all necessary information in the records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be no additional costs imposed as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes standards for medical records created and maintained by credential holders of the board.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.175, 321.235(2)(b)3.c., 321.187

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not a new program. There will not be any costs to administration because the medical records are created and maintained by the credential holder, not the board.

(d) How much will it cost to administer this program for subsequent years? Costs may decrease as both practitioners and clients understand the expectations for medical records; the board hopes to see a reduction in grievance cases.

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

regulation.

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amended After Comments)

201 KAR 16:702. Standards for veterinary surgery.

RELATES TO: KRS 321.175, 321.190, 321.193, 321.441, 321.443

STATUTORY AUTHORITY: KRS 321.175, 321.235(2)(b)3.c.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 and 321.235 declare that the Kentucky Board of Veterinary Examiners shall protect the public by ensuring only qualified individuals are allowed to practice veterinary medicine the Commonwealth in the interest of the health, safety, and welfare of the animal population and the citizens of Kentucky. KRS 321.190 and 321.193 detail that a license is required for veterinarians to practice veterinary medicine in the Commonwealth. KRS 321.441 and 321.443 detail that veterinary technicians and veterinary assistants shall be properly supervised when assisting a veterinarian with the practice of veterinary medicine. This administrative regulation sets forth minimum standards for surgical procedures to ensure the safety and welfare of animal patients, and provides confidence in basic care and support for clients.

Section 1. Definitions.

(1) "Animal" has the same meaning as KRS 321.181(5).

(2) "Large animal" includes bovids, camelids, cervids, equids, swine, or other animals ordinarily raised or used on a farm.

(3) "Patient" has the same meaning as KRS 321.181(47).

(4) "Professional arrangements" means that the veterinary facility where surgery takes place or the veterinarian who performed surgery shall not list another veterinary facility as able to provide services to a client unless they have previously confirmed that the alternate veterinary facility is available to provide services. This does not need to be done on a case-by-case basis but may be professionally arranged in advance for all clients.

(5) "Small animal" includes any animal not within the

definition of large animal, and regardless of weight includes avians, canids, felines, rabbits, pocket pets, and other animals typically kept as companion animals.

Section 2. All veterinary ~~surgeries~~**[medical]** procedures performed in the Commonwealth shall comply with the following basic surgical standards.

(1) If ~~patients~~[animals]** are housed or retained for treatment ~~in a veterinary facility~~:**

(a) Appropriate housing shall be provided for each ~~patient~~[animal]** before and after surgery; and**

(b) Enclosures shall be secure and provide a flat surface for the ~~patient~~[animal]** that is clean, dry, and warm with adequate space for the ~~patient~~**[animal]** to turn around, while allowing for safety at various stages of sedation and anesthesia and sufficient visibility by the staff.**

(2) All drugs and biologicals shall be labeled in accordance with 201 KAR 16:600, and ~~procured, managed, and disposed of~~[maintained, administered, dispensed, and prescribed]** in compliance with state and federal laws.**

(3) During the postoperative period, care shall be taken to provide patients with a smooth transition from the anesthetized state.

(4) Plans shall be in place to handle any emergency that might occur throughout the procedure, and ~~immediately~~ postoperatively ~~while the patient is with the veterinarian or in the veterinary facility~~.

(5) ~~Immediately prior to release, patients~~[Patients]** shall be evaluated and deemed adequately recovered, stable, ~~mobile~~**[ambulatory]**, and within normal physiological parameters following anesthesia. ~~A veterinarian shall use their best professional judgment and medical training to make an appropriate determination about recovery for the specific species and patient~~**[immediately prior to release]**.**

(6) ~~The client shall be provided clear~~[Clear]** instructions for postoperative care ~~[by the client shall be provided to the client both verbally and]~~in writing. ~~For those clients which are provided repeated services, a single instance of written instructions may be provided during the term of the VCPR pursuant to KRS 321.185.~~**

(7) ~~The client shall be provided options in writing~~[Arrangements]** for follow-up or emergency care during the ~~forty-eight (48)~~ [48]-hour period after surgery ~~that includes information for a twenty-four (24) hour emergency veterinary facility or with another veterinary facility where professional arrangements have been made to see clients~~**[shall be provided to the client both verbally and in writing]**.**

~~[(8) A veterinarian may perform emergency aseptic surgical procedures in another room when the room designated for aseptic surgery is occupied or temporarily unavailable.]~~

Section 3.~~[Section 2.]~~ Additional Requirements for Small ~~Animal Patients~~**[Animals]**. All veterinary medical procedures performed on small animals in the Commonwealth shall comply with **Section 2**~~[Section 4]~~ of this administrative regulation and the following basic surgical standards.

(1) The operating area shall:

(a) Be dedicated to surgery ~~while in use for surgical purposes~~; and

(b) Contain the necessary equipment for anesthesia, appropriate intubation, administration of oxygen, and monitoring; and

(2) Establish, maintain, and follow the following protocols:

(a) Infectious disease protocols to be performed in an environment to minimize infectious disease;

(b) Aseptic surgical technique protocols;

(c) Sterile instruments protocols ensuring separate sterile instruments to be used for each patient. Cold sterilization is not considered an appropriate method to adequately sterilize surgical instruments for small animals, except for cold sterilization for endoscopic, laproscopic, and arthroscopic procedures. In these allowable instances of cold sterilization, the method is permitted only by use of **FDA-Cleared Liquid Chemical Sterilants and High**

Level Disinfectants[glutaraldehyde-based products];

(d) Anesthetic protocols that are balanced and include sedation, the provision of **peri-[pre-]** and post-operative analgesia, stress reduction, muscle relaxation, and controlled, complete recovery of consciousness prior to discharge;

(e) Pre- and post-op monitoring protocols to monitor patients; and

(f) Thermal support protocols.

Section 4.[Section 3.] Responsibility for Patient Care.

(1) During the forty-eight (48) hour period after surgery, **a client shall be provided information in accordance with Section 1(7) of this administrative regulation[the veterinarian who performed the surgery is responsible for patient aftercare and 24/7 emergency management following the surgery].**

(2) If there are no personnel on the premises during any time **a patient[an animal]** is left at the veterinary facility:

(a) Prior notice of this fact shall be given to the client in writing and the notification recorded in the medical records; and

(b) If requested, the client shall be provided an option to transfer the patient care to a twenty-four (24) hour facility.

[(3) The veterinarian who performed the surgery shall be relieved of this responsibility only when the following conditions are met:

(a) The veterinarian or veterinary facility has made specific arrangements in writing with another veterinarian to provide emergency care for the surgical patient;

(b) The client has been informed both verbally and in writing of the transfer of responsibility; and

(c) The client has been provided current contact information for the new responsible care provider.]

Section 5.[Section 4.] Large Animal Patient Standards and Exceptions.

(1) Field surgeries shall be performed within an appropriate environment as possible.

(2) Appropriate cold sterilization is acceptable in field work.

(3) During the postoperative period, care shall be taken to provide patients with a smooth transition from the anesthetized state. A veterinarian shall use their best professional judgment and medical training to make an appropriate determination about recovery for the specific species and patient.

(4) All drugs and biologicals shall be labeled in accordance with 201 KAR 16:600, and procured, managed, and disposed of in compliance with state and federal laws.

(5) Plans shall be in place to handle any emergency that might occur throughout the procedure, and postoperatively while the patient is with the veterinarian.

(6) The client shall be provided clear instructions for postoperative care in writing. For those clients which are provided repeated services, a single instance of written instructions may be provided during the term of the VCPR pursuant to KRS 321.185.

(7) The client shall be provided options in writing for follow-up or emergency care during the forty-eight (48) hour period after surgery that includes information for a 24-hour emergency veterinary facility or professional arrangements with another veterinary facility.[Client Notification. Clients, owners, or the designated care provider for the patient shall be informed both verbally and in writing of the following information following surgery.

(1) Post-operative medical care instructions; and

(2) 24/7 emergency contact information for the forty-eight (48) hour period following surgery.]

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards regarding basic requirements for veterinary surgery.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standard protocols and procedures for credential holders of the board to perform veterinary surgery on animals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the basic requirements and standards for veterinary surgery.

(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: 2,690 veterinarians and 590 licensed veterinary technicians, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All licensees identified in question (3) are required to have and maintain minimum equipment and supplies to safely and humanely conduct animal surgery. This new administrative regulation establishes the requirements for veterinary surgery, ensuring transparency of board expectations and standardizing veterinary surgery in order to assist in patient care and welfare.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be no additional costs imposed as a result of this administrative regulation unless a licensee does not have appropriate equipment and supplies on hand for the services offered.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes standards for veterinary surgery performed by licensees of the board.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.351, 321.360, 321.990.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not an agency program. This regulation establishes requirements for licensees of the board.

(d) How much will it cost to administer this program for subsequent years? This is not an agency program. Costs will be very minimal.

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

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements for veterinary surgery standards, making them easily accessible for regulated entities and the public.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (Amended After Comments)

201 KAR 16:750. Licensed veterinary technicians (LVTs) -- Veterinary assistants -- Scope of practice and supervisory requirements.

RELATES TO: KRS 321.175, 321.190, 321.441, 321.443
STATUTORY AUTHORITY: KRS 321.235(2)(b)3.c., 321.441(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 and 321.235 declare that the Kentucky Board of Veterinary Examiners shall protect the public by ensuring only qualified individuals are allowed to engage in the practice of veterinary technology in the Commonwealth to promote, preserve, and protect the public health, safety, and welfare. KRS 321.441 details that a license is required for veterinary technicians to practice veterinary technology in the Commonwealth. **KRS 321.190(1) provides that veterinary assistants may work in the Commonwealth without a veterinarian or veterinary technician license.** KRS 321.441 and 321.443 detail that **licensed** veterinary technicians and veterinary assistants must be properly supervised when assisting a veterinarian with the practice of veterinary medicine. This administrative regulation sets forth the scope of practice **for licensed veterinary technicians (LVTs) and veterinary assistants** under various levels of veterinarian supervision to ensure the safety and welfare of animal patients, clearly define appropriate roles to be assigned by supervisors, and to provide confidence in basic care and support for clients.

Section 1. Definitions.

(1) "Direct supervision" is defined by KRS 321.181(59)(c).

(2) "Immediate supervision" is defined by KRS 321.181(59)(b).

(3) "Indirect supervision" is defined by KRS 321.181(59)(d).

(4) "Veterinarian-client-patient relationship" or "VCPR" is defined in KRS 321.185.

Section 2. General Provisions.

(1) Pursuant to KRS 321.190(7), a supervising veterinarian is individually and separately responsible and liable for the performance of the acts delegated to and the omissions of the licensed veterinary technician, veterinary assistant, or any other individual working under the veterinarian's supervision. Nothing in this subsection shall be construed to relieve licensed veterinary technicians, veterinary assistants, or any other individuals working under supervision of any responsibility or liability for any of their own acts or omissions.

(2) Except as authorized by KRS 321.200, KRS 321.201, and subsection (3) of this administrative regulation, pursuant to KRS 321.190(6) nothing in KRS Chapter 321 or 201 KAR Chapter 16 shall be construed to permit an LVT, veterinary assistant, or any person who is not a veterinarian to perform any of the following activities relating to animals:

(a) Surgery;

(b) Diagnosis;

(c) Prognosis; or

(d) Prescription.

(3) Veterinary students enrolled in good standing in an approved veterinary medical program or veterinary technology students enrolled in good standing in an approved veterinary technology program may perform tasks related to curriculum advancement or preparation for a board approved national exam while under the direct supervision of a veterinarian or immediate supervision of an LVT.

(4) Persons providing clinical care to patients shall comply with the medical record keeping requirements established in KRS 321.187 and 201 KAR 16:701.

Section 3. Restrictions on the use of Licensed Veterinary Technicians.

(1) ~~An LVT[A licensed veterinary technician (LVT)]~~ may perform ~~acts as assigned~~~~[the following acts as set forth in this~~

~~administrative regulation~~] under the direction, supervision, and responsibility of a board-licensed veterinarian, who has established and maintains a current veterinarian-client-patient relationship (VCPR) with the patient and the client in accordance with KRS 312.185.

(2) The veterinarian and LVT shall comply with the record keeping ~~requirements~~[rule] established ~~in KRS 321.187 and~~by the board in 201 KAR 16:701 (Standards for Medical Records).

(3) The decision about the level of supervision required by an LVT is ultimately up to the discretion and professional judgement of the supervising veterinarian as long as:

(a) ~~[The tasks assigned to the LVT do not provide a lower level of supervision than that which is prescribed in this administrative regulation;~~

(b) The supervising veterinarian is confident in the level of training and trust in the LVT; and

(b)(c) The tasks assigned to the LVT are not otherwise prohibited by KRS Chapter 321, 201 KAR Chapter 16 and comply with all state and federal laws.

~~[(4) Pursuant to KRS 321.443, a veterinary assistant under the employ of a board-licensed veterinarian may be assigned work similar to an LVT, as described in subsection (3) of this section, so long as the supervising veterinarian is confident in the level of training and trust in the veterinary assistant and their ability to competently and safely perform assigned tasks.~~

(5) Except as authorized by KRS 321.200, nothing in KRS Chapter 321 or 201 KAR Chapter 16 shall be construed to permit an LVT or veterinary assistant, or any person who is not a veterinarian to perform any of the following activities relating to animals:

- (a) Surgery;
- (b) Diagnosis;
- (c) Prognosis; or
- (d) Prescription.

~~Section 3. Immediate Supervision. Allowable animal healthcare tasks for LVTs under immediate supervision are:~~

- (1) Assisting the Veterinarian with surgical procedures; and
- (2) Placement of abdominal, thoracic, or PEG tubes.

~~Section 4. Direct Supervision. Allowable animal healthcare tasks under direct supervision are:~~

- (1) Dental procedures including, at a minimum:
 - (a) ~~The removal of calculus, soft deposits, plaque, and stains;~~
 - (b) The smoothing, filing, and polishing of teeth;
 - (c) Dental single root extractions not requiring sectioning of the tooth or sectioning of the bone;
 - (d) Suturing a gingival incision;
- (2) Euthanasia; and
- (3) Placement of intraosseous catheterization.

~~Section 5. Indirect Supervision. Telesupervision falls under the definition of indirect supervision. Allowable animal healthcare tasks under indirect supervision are:~~

- (1) ~~General anesthesia and sedation, maintenance, and recovery;~~
- (2) Non-emergency endotracheal intubation;
- (3) Regional anesthesia, including paravertebral blocks, epidurals, local blocks;
- (4) Placement of tubes, including at a minimum:
 - (a) Gastric tubes;
 - (b) Nasogastric tubes; and
 - (c) Nasoesophageal tubes;
- (5) Placement of epidural and nasal catheters;
- (6) Ear flushing with pressure or suction;
- (7) Application of casts, splints, and slings for the immobilization of fractures;
- (8) Administration of chemotherapy;
- (9) Administration of radiation therapy;
- (10) Intravascular catheterization through creation of a relief hole in the skin;
- (11) Intra-arterial catheterizations;

~~(12) Unless prohibited by state or federal regulation administration, preparation and application of treatments, including at a minimum:~~

- (a) Drugs;
 - (b) Medications;
 - (c) Controlled substances;
 - (d) Enemas; and
 - (e) Biological and immunological agents,
- ~~(13) Suturing, stapling, and gluing of an existing surgical skin incision;~~

~~(14) Fluid aspiration from a body cavity or organ, as known as cystocentesis;~~

~~(15) Intravenous catheterization, intra-arterial catheterization, and maintenance;~~

~~(16) Imaging, including at a minimum:~~

- (a) Radiography;
 - (b) Ultrasonography;
 - (c) Computed tomography;
 - (d) Magnetic resonance imaging;
 - (e) Fluoroscopy; and
 - (f) Administration of radio-opaque agents/materials;
- ~~(17) Except when in conflict with state or federal law:~~

~~(a) Collection of blood;~~
~~(b) Collection and preparation of cellular or microbiological samples by skin scrapings, impressions, or other non-surgical methods;~~

~~(18) Collection of urine by expression, catheterization (unobstructed), and insertion of an indwelling urinary catheter;~~

~~(19) Monitoring, including at a minimum:~~

- (a) ECG;
- (b) Blood pressure; and
- (c) CO2 and blood oxygen saturation;
- (20) Clinical laboratory test procedures;
- (21) Handling and disposal of biohazardous waste materials;

~~(22) Implantation of a subcutaneous identification chip;~~

~~(23) Laser therapy;~~

~~(24) Animal rehabilitation therapies;~~

~~(25) Ocular tonometry, Schirmer tear test, and fluorescein stain application;~~

~~(26) Suture and staple removal;~~

~~(27) Reproductive ultrasound, and semen evaluation;~~

~~(28) Floating equine teeth; and~~

~~(29) Tasks at the discretion of the veterinarian, which are not in contravention of KRS 321.190 and 321.181(50).]~~

Section 4.[Section 6.] Patient Emergency Care Provided by LVTs.[Emergency Animal Patient care.

(4) A supervising veterinarian in emergency [animal patient] care situations may assign to an LVT under indirect supervision, via verbal communication or in accordance supervising veterinarian's written protocols, the following tasks until such time as the veterinarian is available on the premises to take over treatment:

(1)[(a)] Application of tourniquets and/or pressure procedures to control hemorrhage;

(2)[(b)] Application of appropriate wound dressings in severe burn cases;

(3)[(c)] Resuscitative oxygen procedures;

(4)[(d)] Anti-seizure treatment; and

(5)[(e)] Supportive treatment in heat prostration cases;[.

(2) In emergency situations and while under the direct supervision of a veterinarian via verbal communication or in accordance supervising veterinarian's protocols, an LVT may:]

(6)[(a)] Administer drugs to control pain and shock;

(7)[(b)] Initiate and perform CPR and provide immediate post resuscitation care, including:

(a)[1.] Administration of medication; and

(b)[2.] Defibrillation according to protocols established in writing at the veterinary facility.

Section 5. Restrictions on the use of Veterinary Assistants.

(1) Pursuant to KRS 321.443, a veterinarian may employ a veterinary assistant and assign work at the discretion of the supervising veterinarian, except for those tasks identified in subparagraph (2) of this section, so long as:

(a) The veterinary assistant is under the direction, supervision, and responsibility of a board-licensed veterinarian, who has established and maintains a current Veterinarian-Client-Patient Relationship (VCPR) with the patient in accordance with KRS 321.185;

(b) The tasks assigned to the veterinary assistant are at all times:

1. Under the supervision of a veterinarian at a minimum supervisory level as detailed in subparagraphs (3) - (5) of this section; or

2. Under the immediate or direct supervision of an LVT;

(c) The supervising veterinarian or supervising LVT is confident in the level of training and trust in the veterinary assistant and their ability to competently and safely perform assigned tasks; and

(d) The tasks assigned to the veterinary assistant comply with all state and federal laws.

(2) Under no circumstances shall a veterinary assistant be assigned the following tasks:

(a) Surgery;

(b) Diagnosis;

(c) Prognosis;

(d) Prescription;

(e) Euthanasia; or

(f) Tooth extractions of any kind.

(3) A supervising veterinarian or LVT may assign to a veterinary assistant the following tasks under immediate supervision.

(a) Regional anesthesia, including paravertebral blocks, epidurals, local blocks;

(b) Fluid aspiration from a body cavity or organ, known as centesis;

(c) Small animal reproductive ultrasound, and semen collection; and

(4) A supervising veterinarian or LVT may assign to a veterinary assistant the following tasks under direct supervision.

(a) Unless prohibited by state or federal regulation administration, preparation and application of treatments prescribed by a veterinarian, including:

1. Controlled substances; and

2. Enemas;

(b) Maintenance and recovery tasks following veterinarian or LVT administration of general anesthesia and sedation;

(c) Non-emergency endotracheal intubation and extubation;

(d) Imaging, including at a minimum:

1. Computed tomography (CT); and

2. Magnetic resonance imaging (MRI);

3. Radiography;

4. Ultrasonography;

5. Fluoroscopy; and

6. Administration of radio-opaque agents/materials;

(e) Floating equine teeth;

(f) Ocular tonometry, Schirmer tear test, and fluorescein stain application; and

(g) Tasks at the discretion of the veterinarian, which are not in contravention of KRS 321.190, 321.181(50), 321.443, and this administrative regulation.

(5) A supervising veterinarian may assign to a veterinary assistant the following tasks under indirect supervision.

(a) Unless prohibited by state or federal law, the administration, preparation and application of treatments prescribed by a veterinarian, including:

1. Drugs;

2. Medications; and

3. Biological and immunological agents;

4. Collection of blood; and

5. Collection and preparation of cellular or microbiological samples by skin scrapings, impressions, or other non-surgical methods;

(b) Intravenous catheterization and maintenance;

(c) Collection of urine by voided sample;

(d) Monitoring, including at a minimum:

1. Electrocardiogram (ECG);

2. Blood pressure; and

3. CO2 and blood oxygen saturation;

(e) Clinical laboratory test procedures;

(f) Handling and disposal of biohazardous waste materials;

(g) Implantation of a microchip;

(h) Laser therapy;

(i) Animal rehabilitation therapies; and

(j) Suture and staple removal.

Section 6. Patient Emergency Care Provided by Veterinary Assistants. A supervising veterinarian in emergency care situations may assign to a veterinary assistant who they employ and who is under the veterinarian's direct supervision, via verbal communication and in accordance supervising veterinarian's written protocols, the following tasks:

(1) Application of tourniquets and/or pressure procedures to control hemorrhage;

(2) Application of appropriate wound dressings in severe burn cases;

(3) Resuscitative oxygen procedures;

(4) Anti-seizure treatment;

(5) Supportive treatment in heat prostration cases;

(6) Administration of drugs to control pain and shock in accordance with state and federal laws; and

(7) Initiation and performance of CPR and performance of immediate post resuscitation care, including:

(a) Administration of medication; and

(b) Defibrillation according to protocols established in writing at the veterinary facility.

MICHELLE M. SHANE, Executive Director

For JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the level of supervision required for various veterinary medicine tasks assigned by a supervising veterinarian to a licensed veterinary technician or veterinary assistant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clearly delineated tasks that a veterinarian may safely assign to veterinary technicians and veterinary assistants, ensuring that the employees are utilized to the fullest extent of their abilities and help reduce workload pressures on veterinarians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation shall assist in effective administration by clearly detailing the tasks a veterinarian can safely and confidently assign to staff.

(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: 2,690 veterinarians, 590 licensed veterinary technicians, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees identified in question (3) generally work together in a veterinary facility. This new administrative regulation establishes the level of supervision required for licensed veterinary technicians (LVTs) and veterinary assistants, increasing work efficiencies. Veterinarians shall be required to assign tasks, and LVTs and veterinary assistants shall be required work within the supervisory parameters established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There shall be no additional costs imposed as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes supervisory requirements only.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.351, 321.360, 321.441, 321.990.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No

revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year? This is not a new program. There are no costs involved.

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

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

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs involved.

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

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

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

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

809 KAR 1:002. Service provider licensing.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260, 230.361, 230.811, 230.814

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 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky. This administrative regulation establishes clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

Section 1. Definitions. (1) "Applicant" means a person applying for a service provider license under KRS 230.814.

(2) "Application" means "Initial/Renewal Application for Service Provider License," KHRC 01-003-01, 06/2023.

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

(4) "Service provider license" means a license granted to a service provider that has a contract with an operator to provide sports wagering services pursuant to KRS 230.814.

(5) "Substantial owner" means a person who owns five (5) percent or more of the company.

Section 2. Applications for Sports Wagering Service Providers.

(1) Initial applications. An applicant shall apply to the commission for a service provider license pursuant to KRS 230.814.

(2) Renewal applications. A service provider license shall be renewed annually in accordance with KRS 230.814.

(3) An initial or renewal application for a service provider license shall be submitted on the form "Initial/Renewal Application for a Service Provider License," KHRC 01-003-01, 06/2023, pursuant to Section 6 of this administrative regulation.

Section 3. License Fees. (1) An applicant shall submit the initial fee of \$50,000 with an initial application for a service provider license. The initial fee shall not be refundable.

(2) A service provider shall submit the renewal fee of \$10,000 with a renewal application for a service provider license. The renewal fee shall not be refundable.

(3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

~~[(4) Renewal applications for a service provider license shall be received by the commission 120 days before the expiration of the current license.]~~

Section 4. Licensing Criteria. The commission shall grant a service provider application if the commission determines that the applicant's participation as a sports wagering service provider is in the best interests of sports wagering in Kentucky. The commission shall consider, at a minimum, the following factors: (1) Whether the applicant otherwise qualifies to receive a license under KRS Chapter 230;

(2) Whether the applicant's key persons and substantial owners qualify to receive applicable occupational licenses under 809 KAR 1:003;

(3) Whether the applicant, in the case of an individual, or the applicant's substantial owners, is at least eighteen (18) years of age;

(4) Whether the applicant demonstrates a level of skill, experience, knowledge, and ability necessary to operate as a service provider as required under this administrative regulation;

(5) Whether the applicant was convicted or charged with any offense for a violation of a gaming law in any jurisdiction;

(6) Whether the applicant appears on the exclusion list of any jurisdiction for having violated a rule of gaming;

(7) Whether the applicant has at least one (1) contract to provide services pursuant to KRS 230.814 to a sports wagering operator; and

(8) Whether the applicant or the applicant's substantial owners are in substantial compliance with all state and federal tax laws.

Section 5. Temporary Licensing. (1) The commission may grant a temporary license after an applicant submits an initial application.

(2) An applicant issued a temporary license pursuant to this administrative regulation or KRS 230.260 shall not be entitled to receive any refund of the ~~[license]~~ fee submitted in connection with the license application.

(3) The commission may change a temporary license issued pursuant to this administrative regulation into an annual license if:

(a) All investigations into the license application are complete;

(b) The commission is satisfied the holder of a temporary license qualifies to hold an annual license; and

(c) The applicant, its parent company, or affiliate subsidiaries have demonstrated that it is licensed to provide gaming services in at least three (3) other United States gaming jurisdictions.

(4) When the commission changes a temporary license into an annual license, the date of issuance of the annual license shall be deemed to be the date that the commission approved the annual license.

(5) A temporary authorization may expire of its own accord, or it may be suspended, revoked, or summarily suspended under the same terms and conditions as an annual license.

(6) The temporary license shall not extend beyond one (1) year and shall expire at the end of the calendar year for which it was issued.

Section 6. Application Procedure. (1) Application procedures for service providers shall be as follows:

(a) A material misrepresentation or omission made with respect to an application may be grounds for denial of the application.

(b) An application shall be deemed filed when the commission receives the completed application forms, including all additional information that the commission requires.

(c) The completed applications shall be filed as follows:

1. An applicant shall submit an original ~~[and five (5) copies]~~ of a fully-executed hard copy application to the commission at the commission's office in Lexington, Kentucky ~~and[or]~~ shall submit the application online at <https://khrc.ky.gov/>.

2. Applicants shall submit the application by September 1 of the year immediately preceding the year for which the license is sought[prior to November 1 of each year].

(d) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(e) Any service provider license holder that enters into or modifies a contract with an[a new] operator licensed under 810 KAR 3:010 shall provide notice to the commission and a copy of the contract within fourteen (14) calendar days.

(f) Any service provider license holder that enters into or modifies a contract with an[a new] occupational licensee that is an information services provider shall provide notice to the commission within fourteen (14) calendar days and, as requested, a copy of the contract.

(g) If a service provider license holder ceases to offer goods and services to an operator licensee, then the service provider shall notify the commission.

(2) An application for a service provider's license shall include the following information:

(a) The name, address, and legal information of the applicant that allows the commission to verify the applicant's legal existence, status, and eligibility for a license, including the applicant's:

1. Business registration details,
2. Business structure, and
3. Business identification number.

(b) A Key Employee License Application(s) as required by 809 KAR 1:003(6)(3)[Application for a substantial owner or key person];

(c) A description of all sports wagering services, equipment, devices, and supplies offered for sale or lease by the applicant in connection with sports wagering;

(d) Details regarding the corporate form of the applicant, including the legal structure or type of business applying for the license;

(e) Relevant contracts related to the sports wagering;

(f) Disclosure of any criminal, civil, or administrative action brought against the applicant;

(g) Description of all other licenses held by the applicant;

(h) The applicant's audited financial statements for each of the three (3) fiscal years immediately preceding the application; and

(i) Organizational and ownership charts of the applicant.

(3) Initial applications completed for sports wagering conducted in 2023 may also serve as the renewal application for sports wagering conducted in 2024.

(4) For sports wagering conducted in 2025 and thereafter, an application shall be filed with the commission prior to November 1 of the preceding calendar year.

Section 7. Duty to Maintain Suitability; Duty to Disclose; Transfer of Ownership Interest. (1) A service provider shall have a continuing duty to maintain suitability for licensure. A license issued under this administrative regulation does not create a property right but shall be a revocable privilege granted by the commission contingent upon continuing suitability for licensure.

(2) A service provider shall be responsible for the following:

(a) Ensuring that all aspects of the sports wagering operation are conducted in accordance with 809 KAR 10:001 through 809 KAR 10:007;

(b) The acts of its employees and agents in the course of their employment; and

(c) Notification of a material change in the information submitted in the application, or a matter that renders the service provider ineligible to hold a service provider license.

(3) A substantial change in ownership shall not occur without prior approval from the commission.

Section 8. Incorporation by Reference. "Initial/Renewal Application for Service Provider License", KHRC 01-002-001, 06/2023, is incorporated by reference.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 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 the procedures and requirements for applying for a service provider license for sports wagering.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

(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 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct sports wagering pursuant to KRS 230.811 and KRS 230.814 in a consistent and systematic way.

(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 affects applicants for a service provider license for sports wagering 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: Applicants for a service provider license for sports wagering will be required to file initial and renewal applications and pay corresponding fees to obtain and maintain a service provider license. Service providers must also maintain suitability for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a service provider license are assessed a fee of \$50,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$10,000.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): As a result of compliance, service providers will be permitted to contract with licensed racing associations to conduct sports wagering in Kentucky.

(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: This regulation establishes fees for initial and renewal applicants for service provider licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes fees for initial and renewal applicants for service provider licenses.

(9) TIERING: Is tiering applied? Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this 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, 230.361, 230.811, and 230.814.

(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 licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax 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 (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is

estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

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? Service providers seeking an initial license to conduct sports wagering will pay an initial fee of \$50,000.

(d) How much will it cost the regulated entities for subsequent years? Service providers seeking to renew a license to conduct sports wagering will pay a renewal fee of \$10,000.

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

Cost Savings (+/-): \$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 will have a major economic impact. Service providers seeking a license to conduct sports wagering will pay an initial fee of \$50,000 and/or a renewal fee of \$10,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

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

809 KAR 1:003. Occupational licenses.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: 230.260(9), 230.310(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering, particularly those who have the capacity to affect the outcome of sports wagering and their supervisors. This administrative regulation establishes occupational licensing application procedures and requirements for a individuals involved in the conduct and management of sports wagering in the Commonwealth.

Section 1. Definitions. (1) "Annual license" means the occupational license issued by the commission after a thorough review of an application, valid for the calendar year for which it is applied.

(2) "Applicant" means a person that applies for an occupational license.

(3) "Background check" means a review of an applicant's criminal, financial, and personal history conducted by the commission.

(4) "Critical component" means any sub-system for which failure or compromise can lead to loss of player entitlements, government revenue or unauthorized access to data used for generating reports for the regulatory body.

(5) "Fees" mean the administrative charges levied by the commission for the processing, issuance, and renewal of occupational licenses.

~~(6) ["Information technology professional license" means a category of occupational license, which is required for all individuals who are responsible for managing, maintaining, developing, and securing the digital and technical assets and systems of an Operator or Service Provider.~~

~~(7) "Key employee license" means a category of occupational license, which is required for all significant employees working for an Operator or a Service Provider who have substantial decision-making power.~~

(8) "Licensee" means any individual or entity that has been granted an occupational license by the commission.

~~(7) [(9)]~~ "Occupational license" means the categories of licenses established by the commission for participants in sports wagering pursuant to KRS 230.210.

~~(8) [(10)]~~ "Race and sportsbook employee license" means a category of occupational license, which is required for all individuals listed in Section 6 of this administrative regulation.

~~(9) [(11)]~~ "Temporary license" means a provisional license granted by the commission during the process of evaluating an application for a permanent license.

Section 2. General Requirements for Applications.

(1) Eligibility: Any individual or entity desiring to participate professionally in sports wagering activities in the Commonwealth shall apply to the commission for an occupational license as categorized in Section 4 of this administrative regulation. This type of license shall be required for certain persons working in a licensed facility for sports wagering, supervisors of individuals who can influence the outcome of sports wagering, specific individuals who have the capability to affect the outcome of sports wagering through the deployment of code and other persons required under this KAR Title 809.

(2) Submission timeframe: Applications for licenses shall be submitted annually. Licenses granted shall remain active only for the calendar year for which they have been applied.

(3) Legal compliance: All applicants shall demonstrate compliance with all laws and regulations regulating sports wagering in Kentucky and any other regulatory, state, federal, or taxing authority.

(4) Lack of material misrepresentation: All information provided on the application form shall be accurate and complete. Material misrepresentation on the application may result in immediate suspension, revocation, denial of the license, or imposition of fines by the commission.

(5) Minimum age: The minimum age requirement for an occupational license in sports wagering shall be eighteen (18) years.

(6) Transparency in entities: If an entity consisting of multiple individuals applies for a license, the entity shall fully disclose the identities and the type of ownership held by all controlling individuals. This information shall include the degree and type of ownership held by each individual in the entity.

(7) Categories of licenses: Different roles within the sports wagering industry may require distinct categories of licenses as set forth in Section 5 of this administrative regulation.

Section 3. Application Fees. (1) All required application fees described under this section shall be submitted to the commission in the form of a certified check, ACH payment, or cashier's check made payable to the commission, or other form as prescribed by the commission.

(2) The following fees shall accompany applications for the following categories of occupational license:

- (a) Race and Sportsbook Employee License: \$150;
- (b) Information Services Provider: \$5,000; and
- (c) Key Employee: \$1,500.

(3) All occupational licenses shall be renewed annually. The renewal fee for each category shall be the same as the initial licensing fee.

(4) If additional costs become necessary to investigate an applicant for a license, the commission may assess an additional investigation fee at its discretion. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license. The investigative fee shall be based on actual costs. If any portion of the investigative fee remains after the investigation is concluded, the remaining portion shall be returned to the applicant or licensee.

(5) Except as noted in subsection (4) of this section, all fees are non-refundable, regardless of whether the application is approved, denied, withdrawn, or if the license is surrendered or revoked.

Section 4. Applications. (1) Application procedures shall be as follows:

(a) An application shall be deemed filed when the commission has received the completed application forms, including the information that the commission has required.

(b) Applicants shall submit the application online at <https://khrc.ky.gov/> or in hard copy to the commission's office in Lexington, Kentucky.

(c) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

(d) Any change in information required for licensing shall be submitted in writing and filed at the commission's office in Lexington, Kentucky, within thirty (30) days of the change, unless it is information listed in (e) of this section.

(e) Alternatively, any change in information may be reported online via a method approved by the commission.

(f) The applicant shall report changes in information in writing within five (5) days of the occurrence for these items:

- 1. Criminal charges;
- 2. Criminal convictions;
- 3. License denials and license suspensions of ten (10) days or more;

4. License revocations or fines of \$500 or more in other jurisdictions;

5. Racing related disciplinary charges pending in other jurisdictions; and

6. Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) An applicant for a **race[racing]** and sportsbook employee license or an information services **provider** license shall include with its application an agreement or statement of intent indicating that a licensed operator or service provider shall utilize the applicant for the provision of goods and services. For 2023, the agreement or statement of intent supporting the applicant's claims may come from a person applying for an operator or service provider license.

(3) The application forms shall be accompanied and supplemented by such documents and information as may be specified or required by the commission. Failure to supply the information requested within five (5) days after the request has been made by the commission shall constitute grounds for delaying consideration of the application.

(4) Renewal applications for licenses may be submitted and may be renewed upon the filing and approval of an application for renewal. Renewal applications for occupational licenses shall be received by the commission sixty (60) days before the expiration of the current license. Renewal applicants who fail to submit their completed applications when due shall not be considered to have made a timely and sufficient application for renewal.

Section 5. Temporary Licenses. (1) The commission may issue a temporary license in accordance with KRS 230.805.

(2) The commission may issue the applicant a temporary license if the application and a criminal history check completed by the commission reveals that the applicant:

(a) has not been charged or convicted of a felony under state or federal law;

(b) has not been charged or convicted of a misdemeanor related to gaming; and

(c) otherwise meets the statutory criteria set forth in KRS Chapter 230.

(3) A temporary license issued under this section shall include, at a minimum, the following:

(a) The applicant's name and business address;

(b) A temporary license number assigned by the commission;

(c) Signature of the executive director, the commission chair, or their designee;

(d) The date the temporary license was issued;

(e) The date the temporary license will expire; and

(f) A reference to any conditions placed on the temporary license.

(4) If the commission grants an annual license to a temporary license holder, the temporary license shall automatically expire upon the start date of the annual license.

(5) A temporary license shall not be transferred without prior approval by the commission.

(6) Failure to advise the commission that the applicant has failed to begin or has ceased providing a licensee with goods and services shall be grounds for the commission to withdraw the temporary license and deny licensure in the future.

Section 6. Categories of Occupational Licenses. (1) Race and sportsbook employee licenses

(a) Race and sportsbook employee license holders shall include the following categories of people, except as otherwise provided in this section:

1. Individuals who work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility, including:

- a. Sports wagering customer service representatives;
- b. Sports wagering ticket writers;
- c. Sports wagering supervisors;
- d. Sports wagering security personnel; and
- e. Sports wagering facility management;

2. Individuals directly supervising other employees in any licensed Kentucky sports wagering business who have the capability of affecting the outcome of sports wagering;

3. Employees in any licensed Kentucky sports wagering business who have the capability to affect the outcome of sports wagering through the deployment of code to production for any critical component of a sports wagering system; and

4. Employees whose duties are performed in the licensed facility for sports wagering that involve money obtained as a result of sports wagering, including the handling of tickets, money, or performing accounting and auditing functions.

(b) The following people shall hold a race and sportsbook employee license, even if they do not work directly in a licensed facility for sports wagering regarding the sports wagering aspect of the facility:

- 1. Audit manager;
- 2. Chief of security;
- 3. Chief of surveillance;
- 4. Chief financial officer or controller;
- 5. General manager;
- 6. Support operations manager;
- 7. Change management employees; and
- 8. Compliance employee supervisors;
- 9. Information technology professionals responsible for maintaining the technology infrastructure of the sports wagering system; and
- 10. Any other employee of an operator or service provider whose duties:

a. Are performed in the licensed facility for sports wagering and

whose duties affect sports wagering;

b. Affect the flow of money obtained as a direct result of sports wagering operations; or

c. Include accounting and auditing functions and whose duties relate to money obtained as a result of sports wagering;

(2) Information services provider licenses. All business entities that provide information services to sports wagering licensees in Kentucky shall obtain an information services license, such as:

(a) Sports Wagering Oddsmakers or Traders;

(b) Sports Wagering Data Source;

(c) Sports Wagering Risk Management;

(d) Sports Wagering Player Account Management; and

(e) Sports Wagering Platform Providers, including geolocation technology, Know Your Customer, or Sports Wagering Equipment Manufacturer.

(3) Key employee licenses.

(a) Each person applying for a license under this administrative regulation that is not an individual shall designate an individual with decision-making authority for its day-to-day operations to apply for a key employee license.

(b) Additionally, a licensed sports wagering business operating in Kentucky shall designate a supervisor for the following areas to apply for a key employee license:

1. Compliance;

2. Trading;

3. Customer Service;

4. Finance and Audit;

5. Risk and Payments; and

6. Information Technology.

Section 7. Waiver for Race and Sports Book Employee License or Key Employee License. (1) At any time, an applicant may[shall] submit a written request for a waiver to be exempt from licensure to prevent dual licensing for one individual across multiple disciplines. This waiver shall be submitted to the commission's office in Lexington, Kentucky on form Race & Sportsbook and Key Employee License Waiver Form, KHRC 01-003-04 or online at <http://khrc.ky.gov>.

(2) The written request for waiver shall include at least the following information:

(a) The name and contact information of the waiver applicant;

(b) All gaming licenses issued to the waiver applicant;

(c) All horse racing licenses issued to the waiver applicant; and

(d) The waiver applicant's current position and job description.

(3) Upon receipt of a waiver request, the commission may grant or deny a waiver, upon consideration of at least the following factors:

(a) The nature of the employee's duties; and

(b) The best interests and integrity of horse racing, pari-mutuel wagering, and sports wagering.

Section 8. Background Checks. After an applicant files a license application, the commission may: (1) Investigate the criminal background, employment history, and gaming history record of the applicant;

(2) Verify information provided by the applicant; or

(3) Engage in research and interviews to determine the applicant's character and qualifications.

Section 9. License Denial, Revocation, or Suspension. (1) The commission or its designee shall deny, suspend, or revoke a license, or otherwise penalize in accordance with KRS 230.310, 230.260, or 230.814 a sports wagering licensee, for any of the following reasons:

(a) Lack of suitability as set forth in KRS Chapter 230;

(b) Adverse effect on public interest, failure to uphold the integrity of the regulatory activities, or engagement in conduct that is otherwise against the best interest of sports wagering, pari-mutuel wagering, or horse racing;

(c) Any criminal conviction, pending charges, or violation of regulatory laws;

(d) Previous license denial, suspension, or revocation by any authority of any state or federal jurisdiction;

(e) Material misrepresentation, falsification, or omission of information in a license application;

(f) Violation or attempt to manipulate outcomes of regulated activities, such as sports wagering, pari-mutuel wager, or horse racing, in any jurisdiction;

(g) Financial irresponsibility or engagement in actions against the best interest of the regulated activities;

(h) Failure to comply with rulings, orders, or requirements of the commission, such as failure to cooperate with a commission investigation;

(i) Misconduct or disorderly behavior on regulated grounds; or

(j) Possession of prohibited substances or devices, or employment of unlicensed personnel.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the commission or its designee.

(3) Licensees or applicants may appeal the suspension, revocation or denial accordance with KRS Chapters 13B and 230.

Section 10. Reciprocity. If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

Section 11. Changes in Application Information. (1) Any changes in the information provided by the licensee or applicant required for obtaining or maintaining a license shall be promptly reported to the commission in writing.

(2) Changes in information that are not detailed in subsection (2) shall be reported to the commission within thirty (30) days of the change occurring.

(3) The licensee or applicant shall report the following changes in information to the commission in writing within five (5) days:

(a) The licensee or applicant is charged with criminal activity related to sports wagering;

(b) The licensee or applicant is convicted of a crime related to sports wagering;

(c) The licensee or applicant's sports wagering license is denied or suspended for ten (10) days or more in any jurisdiction; and

(d) The licensee or applicant's sports wagering license is revoked or they are fined \$500 or more in other jurisdictions;

Section 12. License Identification and Display. (1) For each issued license, the commission shall provide an identification badge to individuals or a certificate of licensure to entities.

(2) All individuals working in a licensed facility for sports wagering shall wear an identification badge.

(3) Operators or service providers shall disable the work badge of any person whose license has been revoked or suspended.

(4) Each identification badge or license shall contain essential details, including, but not limited to, the licensee's name, license number, date of issuance, and expiration date.

(5) Individual licensees shall be required to wear their identification badges visibly at all times during their working hours in any licensed facility for sports wagering.

(6) In cases where a licensee fails to display their badge or license as required, the commission may impose penalties, which may include fines, suspension, or revocation of the license.

(7) Loss, theft, or damage of an identification badge or license shall be reported to the commission immediately. The commission shall provide a process for obtaining replacement badges or licenses under these circumstances.

(8) Any attempt to falsify, alter, or misuse an identification badge or License shall be considered a severe violation and may result in immediate revocation of the license and potential legal action.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information Services License Application Form", KHRC 01-003-01, 06/2023;

(b) "Multi-Jurisdictional Key Employee License Form", KHRC 01-003-02, 11/2023[06/2023];

(c) "Race and Sportsbook Employee Application Form", KHRC 01-003-03, 11/2023[06/2023]; and

(d) "Race & Sportsbook and Key Employee License Waiver Form", KHRC 01-003-04, 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>.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 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 the procedures and requirements for applying for occupational licenses related to sports wagering in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for occupational licenses related to sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. KRS 230.310(2) requires the commission to license applicants for occupations related to sports wagering. This regulation sets forth the procedures and requirements for applying for an occupational license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue occupational licenses to conduct sports wagering pursuant to KRS 230.310(2) in a consistent and systematic way.

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

(a) How the amendment will change this existing administrative regulation: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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 directly affects individuals who will apply to be licensed to engage in certain occupations to conduct sports wagering in the Commonwealth. Since this is a new regulation creating new types of licenses, it is unknown how many individuals will be impacted by this regulation. This regulation may also affect licensed racing associations that offer sports wagering and choose to hire occupational licensees. There are currently nine (9) licensed tracks operating in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals applying for a license to conduct sports wagering under this regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee. The same fees apply to renew these licenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the occupational license application requirements, licensees will be allowed to work in certain occupations in the sports wagering industry.

(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: No additional funding is required for the implementation and enforcement of the sports wagering occupational licensure 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: The establishment of fees will be necessary to implement this regulation, because the regulation establishes fees for initial and renewal applicants for sports wagering occupational licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes fees for initial and renewal applicants for sports wagering occupational licenses.

(9) TIERING: Is tiering applied? Tiering was not applied because this 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 and individuals applying for sports wagering occupational licenses will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(9) and KRS 230.310(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? It is unknown how much revenue this occupational licensure regulation will generate for state government during the first year, as it is unknown how many people will apply for occupational licenses.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue this occupational licensure regulation will generate for state government during subsequent years, as it is unknown how many people will apply for occupational licenses.

(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 (+/-): Any revenue will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time.

Expenditures (+/-): Any expenditures will be dependent on the number of initial license applicants and renewal applicants, which is unknown at this time. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

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 year.

(c) How much will it cost the regulated entities for the first year? Applicants for a new race and sportsbook employee license are assessed a fee of \$150. Applicants for an information services provider license are assessed a fee of \$5,000. Applicants for a key employee license are assessed a \$1,500 fee.

(d) How much will it cost the regulated entities for subsequent years? The cost of renewing these licenses is the same cost as the initial application fee.

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 (+/-): Please see 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)]. It is unknown whether this regulation will have a major economic impact. It is estimated that applicants seeking a race and sportsbook employee license will pay an initial fee of \$150 and another \$150 each year they seek to renew their license. Applicants seeking licensure as an information services provider will pay an initial fee of \$5,000 and a renewal fee of \$5,000 each year they seek renewal. It is estimated that applicants seeking licensure as a key employee will pay an application fee of \$1,500 for an initial license and a renewal fee of \$1,500 each year they seek to renew the license. It is unknown how many people will apply for occupational licenses in the Commonwealth.

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

809 KAR 10:001. General provisions.

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 **in a decision-making or managerial role**, 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, ~~for a~~ service provider license, or an occupational 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.]~~

~~[(28)]~~[(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.

~~[(29)]~~[(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).

~~[(30)]~~[(31)] "Operator licensee" or "sports wagering operator" or means a Kentucky racing association licensed to conduct sports wagering pursuant to KRS 230.805.

~~[(31)]~~[(32)] "Person" is defined by KRS 230.210.

~~[(32)]~~[(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.

~~[(33)]~~[(34)] "Patron" means a person who wagers on sporting events.

~~[(34)]~~[(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.

~~[(35)]~~[(36)] "Prize pool" means the prize available for an individual tournament, contest, or pool.

~~[(36)]~~[(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~~commonwealth~~, local, or federal law.

~~[(37)]~~[(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.

~~[(38)]~~[(39)] "Racing commission" is defined by KRS 230.210.

~~[(39)]~~[(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.

~~[(40)]~~[(41)] "Rake adjustment" means an adjustment made by a licensee to account for any shortfall in connection with a tournament, contest, or pool.

~~[(41)]~~[(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.]~~

~~[(42)]~~[(43)] "Self-exclusion list" means a list of individuals who voluntarily excluded themselves from establishing or maintaining a sports wagering account with a licensee.

~~[(43)]~~[(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.

~~[(44)]~~[(45)] "Service provider" is defined by KRS 230.210.

~~[(45)]~~[(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.

~~[(46)]~~[(47)] "Sporting event" is defined by KRS 230.210.

~~[(47)]~~[(48)] "Sports governing body" is defined by KRS 230.210.

~~[(48)]~~[(49)] "Sports wagering" is defined by KRS 230.210.

~~[(49)]~~[(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.

~~[(50)]~~[(51)] "Sports wagering device" is defined by KRS 230.210.

~~[(51)]~~[(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.

~~[(52)]~~[(53)] "Sports wagering service provider" or "service provider" is defined by KRS 230.210.

~~[(53)]~~[(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.

~~[(54)]~~[(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.

~~[(55)]~~[(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.

~~[(56)]~~[(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.

~~[(57)]~~[(58)] "Surveillance operation room(s)" means the secured area(s) where surveillance takes place or where active surveillance equipment is located.

~~[(58)]~~[(59)] "Surveillance system" means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other equipment used for surveillance.

~~[(59)]~~[(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.

(60) [(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.

(61) [(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.

(62) [(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.

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

(64) [(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.

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

(66) [(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.

(67) [(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.

(68) [(69)] "Web site or mobile application" means a Web site or application on a mobile phone or other device through which an individual is able to place a sports wager.

(69) [(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.

(3) This material may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel,
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(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: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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 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 (Amended After Comments)

809 KAR 10:002. Standards for sports wagering.

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 **officialing decisions**~~[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[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[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(s)~~[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 at 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 **what constitutes a[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 **the cancelling or voiding of the sports wager did not conform with this regulation**~~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.

JENNIFER WOLSING, General Counsel

For JONATHAN RABINOWITZ, Chair

RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023

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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.

(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: 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:

(a) 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.

(b) Additionally, there are an unknown number of patrons who

will choose to engage in sports wagering.

(c) 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? This regulation is not expected to generate cost savings for subsequent years.

(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: 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
(Amended After Comments)**

809 KAR 10:003. Technical requirements and oversight.

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 ~~an~~**[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) The geolocation services used by the licensee shall be certified by an authorized independent testing laboratory. The commission or its designee may conduct applicable field testing upon certification. 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 unauthenticated 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.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 a.m.

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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: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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:

(a) 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.

(b) Independent testing labs that certify these systems will be impacted by this regulation.

(c) 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 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 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 (Amended After Comments)

809 KAR 10:004. Sports wagering accounts.

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[~~2~~], **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 **maintained in a separate, easily accessible repository that is subject to review by the commission. These documents shall be readily accessible to the account holder before and after registration. Material updates to these terms and conditions and privacy policies shall trigger immediate notification to the licensee's internal controls oversight team and the commission, 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. **However, for withdrawals via check, a licensee must honor the account holder's request within fourteen (14) days after the request, unless the conditions set forth 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. **Upon making such an increase, the licensee shall notify the account holder of an option to reverse the increase within a specified time frame listed in the licensee's internal controls, 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.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 a.m.

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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: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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 affects:

(a) 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.

(b) 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.

(c) 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 (Amended After Comments)

809 KAR 10:005. Licensed premises.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, 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 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.805 permits sports wagering at a licensed facility for sports wagering on licensed premises. This administrative regulation establishes controls for sports wagering on licensed premises, including the floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

Section 1. Floor Plan.

(1) An applicant for a sports wagering operator's license shall specify where sports wagering will take place within the licensed facility for sports wagering, if any, by providing the following information:

(a) A drawing to scale of the building, and each floor thereof, in which sports wagering shall be conducted, at a scale sufficient to identify all of the information established in this section.

(b) The drawing shall depict the following information:

1. The total square footage of the race and sports book location;
2. A diagram, outlined in red, of the proposed designated area for the sports wagering, if any, on each floor within the building;
3. The race and sports book locations, including each wagering window;

4. The locations of each sports wagering kiosk. Notwithstanding the foregoing, licensees may move sports wagering kiosks from one location to another with approval of the racing commission;

5. Any race and sports book location that is, or is from time to time, a restricted race and sports book location, specifying the nature of the restrictions and when they will apply;

6. Each cage;

7. The count room;

8. The vault;

9. Any other restricted areas; and

10. All areas subject to surveillance.

(c) A certificate of compliance approved by the local fire and building officials which has been approved; and a written statement by the appropriate local official that handicapped access to the designated licensed facility for sports wagering has been provided.

(2)

(a) The race and sports book shall include both sports wagering and pari-mutuel products.

(b) All floor plans for a race and sports book shall be approved by the commission. In considering a request related to a floor plan, the commission shall consider, among other things:

1. The equitable number, size, and picture clarity of displays or other equipment used to show broadcasts of horse racing and sporting events;

2. The equitable number of sports wagering kiosks and pari-mutuel wagering terminals; and,

3. The presence of a live sports wagering teller on the licensed premises.

(3) The designated licensed facility for sports wagering and simulcasting areas shall be approved by the commission as a condition of license approval.

(4) A floor plan may be amended upon request by the licensed premises and approval by the racing commission. Such a request shall be filed with the racing commission in writing at least seventy-two (72) hours prior to the time for which implementation of the amendment(s) is sought.

(5) If a licensee includes a sports wagering kiosk in a simulcast area, the layout of the simulcast area shall be subject to commission approval.

Section 2. Race and Sports Book Locations. Designated race and sports book locations within the licensed premises shall be established so as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

Section 3. ~~Underage Persons Prohibited from Wagering. An underage person shall not be permitted by any licensee to purchase or cash a sports wagering ticket or voucher.~~

Section 4.] Anonymous Wagers and Payouts Greater Than \$10,000. The requirements of this section only apply for wagers and payouts not associated with a sports wagering account.

(1) Prior to accepting any wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager, a licensee shall obtain and record the following information:

(a) The patron's full legal name;

(b) The patron's date of birth;

(c) The patron's principal physical address other than a post office box;

(d) The patron'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

(e) The document number from one of the following valid identification credentials collected from the patron to verify their identity:

1. Driver's license;

2. Passport;

3. Non-resident alien identification card;

4. Other reliable government-issued identification credentials; or

5. Other picture identification credential normally acceptable as a means of identification when cashing checks.

(2) Subsequent to accepting a wager in excess of \$10,000 or making a payout in excess of \$10,000 on a winning wager the licensee shall maintain records for five (5) years that include:

(a) The time and date of the wager or payout;

(b) The amount of the wager or payout;

(c) The patron's full legal name;

(d) The ticket writer or other identification of the location where the wager or payout occurred; and

(e) The identification of the employee(s) accepting or approving the wager and payout on the wager.

(3) Licensees shall monitor all wagers and payouts to ensure patrons are not circumventing the recording and reporting requirements of this section.

Section 4.[Section 5.] Wagering Windows. (1) Each licensed premises may have one or more wagering windows located in the race and sports book location or other window locations as approved by the racing commission.

(2) A wagering window shall:

(a) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a

manner approved by the racing commission;

(b) Include one (1) or more ticket writer stations, each of which shall:

1. Interface with the Sports Wagering System for all sports wagers placed;

2. Contain a permanently affixed number, which shall be visible to the surveillance system;

3. Contain manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s); and

4. Contain full enclosures, unless funds are either secured in a drop safe approved by the racing commission or transferred to the vault or cage;

(c) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance operation room(s);

(d) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(e) Require any emergency exit door that is not a mantrap to be alarmed.

(3) A wagering window shall have access to a secure location, such as a vault, for the purpose of storing funds issued by a cage to be used in the operation of Sports Wagering. The secure location shall:

(a) Be a fully enclosed room, located in an area not accessible to the public;

(b) Have a metal door with a locking mechanism that shall be maintained and controlled by the wagering manager;

(c) Have an alarm device that signals surveillance personnel if the door to the secure location is opened; and

(d) Have surveillance equipment capable of accurate visual monitoring and recording of all activities in the secure location.

(4) A wagering window shall have an operating balance not to exceed an amount specified in the licensee's internal controls and approved by the racing commission. Funds in excess of the operating balance shall be transferred to the cage in a secured container by an employee of the counter accompanied by a security officer. Prior to transporting the funds, security personnel shall notify surveillance personnel that the transfer will take place. Surveillance personnel shall monitor the transfer. The funds shall be transferred with appropriate documentation as set forth in the internal controls, as approved by the commission.

(5) The assets for which each ticket writer is responsible shall be maintained on an imprest basis. A ticket writer shall not permit any other person to access the ticket writer's imprest inventory.

(6) A ticket writer shall begin a shift with an imprest amount of currency and coin to be known as the "wagering inventory." No funds shall be added to or removed from the wagering inventory during such shift except:

(a) In collection of sports wagers;

(b) In order to make change for a patron placing a wager;

(c) In collection for the issuance of vouchers;

(d) In payment of winning or properly cancelled or refunded wagers;

(e) In payment of vouchers;

(f) To process deposits or withdrawals to or from a sports wagering account, where supported;

(g) In exchanges with the cashier's cage, a satellite cage, or vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes; or

(h) In payment of appeasement payments.

(7) A wagering inventory slip shall be completed and signed or initialed by the wagering manager, and the following information shall be recorded thereon at the commencement of a shift:

(a) The date, time, and shift of preparation;

(b) The denomination of currency and coin in the wagering inventory issued to the ticket writer;

(c) The total amount of each denomination of currency and coin in the Wagering inventory issued to the ticket writer;

(d) The ticket writer station to which the ticket writer is assigned; and

(e) The signature or initials of the wagering manager.

(8) A ticket writer assigned to a ticket writer station shall count and verify the wagering inventory at the vault or other approved location and shall reconcile the count to the wagering inventory slip.

The ticket writer shall sign the count sheet attesting to the accuracy of the information recorded thereon. The wagering inventory shall be placed in a ticket writer's drawer and transported directly to the appropriate ticket writer station by the ticket writer.

(9) If funds are transferred from the vault to a ticket writer, the wagering manager responsible for the vault shall prepare a two-part Writer Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be retained by the ticket writer. The form shall include:

- (a) Date and time of the transfer;
- (b) Designation of the vault location;
- (c) Ticket writer station to where the funds are being transferred

to;

- (d) Amount of each denomination being transferred;
- (e) Total amount of the transfer;
- (f) Signature of the preparer of the transfer;
- (g) Signature of the manager verifying and issuing the funds;

and

(h) Signature of the ticket writer verifying and receiving the funds.

(10) If funds are transferred from the ticket writer to a vault, a two-part Writer Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the ticket writer and the duplicate shall be immediately returned with the funds to the vault. The form shall include:

- (a) Date and time of the transfer;
- (b) Designation of the vault location where the funds are being transferred to;

(c) Ticket writer station to where the funds are being transferred from;

- (d) Amount of each denomination being transferred;
- (e) Total amount of the transfer;
- (f) Signature of the ticket writer verifying and sending the funds to the vault; and

(g) Signature of the manager verifying and receiving the funds.

(11) At the conclusion of a ticket writer's shift, the ticket writer's drawer and its contents shall be transported directly to the vault or to a location approved by the racing commission in the wagering window, where the ticket writer shall count the contents of the drawer and record on the Wagering Inventory Slip the following information:

- (a) The date, time, and shift of preparation;
- (b) The denomination of currency and coupons in the drawer;
- (c) The total amount of each denomination of currency and coupons in the drawer;

(d) The total of the Writer Transfer-Out forms;

(e) The total of the Writer Transfer-In forms;

(f) The total amount in the drawer; and

(g) The signature of the ticket writer.

(12) The wagering manager shall compare the ticket writer closing balance to the wagering inventory slip total, record any over or short amount, and sign the wagering inventory slip.

(13) If the wagering inventory slip lists an overage or shortage, the ticket writer and the wagering manager shall attempt to determine the cause of the discrepancy in the count. If the discrepancy cannot be resolved, such discrepancy shall be reported to surveillance personnel and the wagering manager or supervisor in charge at such time. Any discrepancy in excess of \$500 shall be reported to the racing commission. Such report shall include:

- (a) Date on which the discrepancy occurred;
- (b) Shift during which the discrepancy occurred;
- (c) Name of the ticket writer;
- (d) Name of the wagering manager;
- (e) Ticket writer station number; and
- (f) Amount of the discrepancy.

(14) If funds are transferred from the vault to the cashier's cage, the wagering manager responsible for the vault shall prepare a two (2) part Vault Transfer-Out form. Upon completion of the form, the original shall be retained by the vault manager and the duplicate shall be transferred with the funds to the cashier's cage. The form shall include:

- (a) Date and time of the transfer;
- (b) Designation of the vault location;
- (c) Designation of the cage location;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the preparer of the transfer;

(g) Signature of the vault manager verifying and issuing the funds; and

(h) Signature of the cage cashier verifying and receiving the funds.

(15) If funds are transferred from the cashier's cage to a vault, a two-part Vault Transfer-In form shall be prepared. Upon completion of the form, the original shall be retained by the cage cashier and the duplicate shall be transferred with the funds to the vault. The form shall include:

(a) Date and time of the transfer;

(b) Designation of the vault location where the funds are being transferred to;

(c) Cashier location where the funds are being transferred from;

(d) Amount of each denomination being transferred;

(e) Total amount of the transfer;

(f) Signature of the cage cashier verifying and sending the funds to the vault; and

(g) Signature of the vault manager verifying and receiving the funds.

(16) In lieu of separate wagering windows with live tellers, cage personnel may write and cash tickets.

Section 5.[Section 6.] Wrong Ticket Claims. Subject to a ticket writer's discretion, any claim by a patron that he or she has been issued a sports wagering ticket other than that requested shall be made before the patron has left the wagering window or before the ticket writer has initiated a transaction with another patron.

Section 6.[Section 7.] Sports Wagering Kiosks. A licensee may utilize sports wagering kiosks located in a licensed premises for wagering transactions in conjunction with a sports wagering system in a location approved by the commission. A sports wagering kiosk shall be established and operated as follows:

(1) All aspects of a sports wagering kiosk, including the computer and any related hardware, software, or related devices, shall be submitted to a nationally recognized, independent testing laboratory approved by the racing commission for certification testing and approved by the racing commission prior to use by a licensee. The racing commission may require any additional testing or field inspection of the sports wagering kiosk it deems necessary prior to or after approval;

(2) To obtain a temporary license, a licensee may submit to the racing commission a certification report of an independent testing laboratory of kiosk components in operation in another jurisdiction in the United States where the licensee is currently licensed or permitted. The report must certify the kiosk components 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.

(3) Each sports wagering kiosk shall be configured not to:

(a) Issue a sports wagering ticket with a wager in excess of \$10,000;

(b) Redeem a winning sports wagering ticket with a value in excess of \$10,000 or other limits set by the IRS; or

(c) Issue or redeem a sports wagering voucher with a value in excess of \$10,000 or other limits set by the IRS;

(4) All sports wagering kiosks shall have a sign permanently affixed to the kiosk notifying the public that patrons shall not be Underage Persons, as approved by the commission;

(5) On a schedule approved by the commission, a licensee shall remove the drop boxes in the sports wagering kiosks. The drop boxes shall be monitored and recorded by surveillance. The licensee shall submit the sports wagering kiosk drop schedule to the

commission or its designee; and

(6) The licensee shall reconcile the sports wagering kiosks on a schedule approved by the commission pursuant to internal controls. Any variance of \$500 dollars or more shall be documented by the accounting department and reported in writing to the racing commission within five (5) business days after drop and count of sports wagering kiosks. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

(7) In locations where sports wagering kiosks do not allow for redemption, the licensee shall display prominently the methods of paying out or cashing out vouchers near each sports wagering kiosk.

Section 7.[Section 8.] Drop and Count.

(1) A licensed premises shall have a count room whose physical access shall be limited to count team employees, designated staff, commission employees, and other persons authorized by the licensee, and shall remain locked unless entry and exist is required by authorized persons.

(a) Count team employees shall not exit or enter the count room during the count except for emergencies or scheduled breaks.

(b) Surveillance staff shall be notified if count room employees exit or enter the count room during the count.

(c) A licensee shall establish a count team policy that shall address the transportation of extraneous personal items such as personal belongings, toolboxes, beverage containers, into or out of the count room.

(2) Security of the count and the count room shall be ensured to prevent unauthorized access, misappropriation of funds, forgery, theft, or fraud.

(a) All counts shall be performed by at least two (2) employees.

(b) At no time during the count shall there be fewer than two (2) count team employees in the count room until the drop proceeds have been accepted into cage or vault accountability.

(c) Count team employees shall be independent of the department being counted. A cage or vault employee may be used if they are not the sole recorder of the count and do not participate in the transfer of drop proceeds to the cage or vault. An accounting employee may be used if there is an independent audit of all count documentation.

(3) Currency cassettes and drop boxes shall be securely removed from sports wagering kiosks.

(a) Surveillance shall be notified prior to the drop boxes or currency cassettes being accessed in a kiosk.

(b) At least two employees shall be involved in the collection of currency cassettes and drop boxes from kiosks and at least one employee should be independent of kiosk accountability.

(c) Currency cassettes and drop boxes shall be secured in a manner that restricts access to only employees authorized by the licensee.

(d) If applicable, redeemed vouchers collected from the kiosk shall be secured and delivered to the appropriate department (cage or accounting) for reconciliation.

(e) Controls shall be established, and procedures implemented to ensure that currency cassettes contain the correct denominations and have been properly installed.

(f) Access to stored full kiosk drop boxes and currency cassettes shall be restricted to:

1. Employees authorized by the licensee; and

2. In an emergency, additional persons authorized for the resolution of a problem.

(g) The kiosk count shall be performed in a secure area, such as the cage or count room.

(h) If counts from kiosks and any other areas requiring counts occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from the kiosks with any other areas requiring counts.

(i) The kiosk drop boxes and currency cassettes shall be individually emptied and counted so as to prevent the commingling of funds between kiosks until the count of the kiosk contents has been recorded.

(j) Procedures shall be implemented to ensure that any corrections to the count documentation are permanent and

identifiable, and that the original, corrected information remains legible. Corrections shall be verified by two (2) employees.

Section 8.[Section 9.] Winning Wagers and Vouchers.

(1) Payment on valid sports wagering tickets shall be made only if presented and surrendered within one (1) year following the settling of the sporting event, or, in the event of a parlay, the last-in-time sporting event to settle on the ticket. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(2) Sports wagering vouchers shall be valid for one (1) year after the date of issuance. Failure to present any voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(3) A mutilated sports wagering ticket or voucher that cannot be identified as a valid ticket or voucher shall not be accepted for payment.

(4) A licensee shall establish a written procedure for granting patrons an opportunity to file a claim on a lost sports wagering ticket or voucher and provide a copy to the racing commission.

Section 9.[Section 10.] Cashiers, Windows, and Cages.

(1) Each licensed premises shall have on or immediately adjacent to the race and sports book location a physical structure known as a cashiers' cage to house the cashiers, which is located in or within close proximity to the race and sports book location. Each licensed premises may also have one or more satellite cages in or within close proximity to the race and sports book location.

(2) A cage or satellite cage shall be fully enclosed and shall have the following features:

(a) Perform financial transactions related to sports wagering;

(b) Be designed and constructed to provide maximum security for the materials stored and the activities performed therein, in a manner approved by the racing commission;

(c) Include openings at one or more numbered cashier windows through which financial transactions related to sports wagering will be conducted, each of which shall contain a cashier's drawer;

(d) Include manually triggered silent alarm systems, which shall be connected directly to the surveillance and the security operation room(s);

(e) Provide for surveillance equipment capable of accurate visual monitoring and recording of any activities; and

(f) Include a mantrap if the cage or satellite cage secure assets having a value greater than an amount established by the racing commission. The outer door of the mantrap shall be controlled by security personnel and the inner door shall be controlled by accounting personnel. The doors of the mantrap shall have separate and distinct locking mechanisms on each door of the double door entry and exit system. The mantrap shall be subject to continuous surveillance coverage.

(3) Each licensed premises may have one or more service windows to serve as a location in the facility to conduct financial transactions. Such window shall be designed and constructed in accordance with subsection (2)(b) of this section, and access shall be controlled by an accounting supervisor.

(4) If approved paperless systems are not in use, the internal controls shall require that documents regarding the funds stored in cages shall be transported between cages in a secure manner approved by the racing commission and accompanied by security.

(5) Each licensed premises shall have on hand in the cage, or readily available such as in a restricted bank account or by bond, a reserve of cash to pay winning patrons.

(6) A cashiers' cage and any satellite cage shall be segregated by personnel such that no single person has both control and approval for any aspect of cage operations maintained.

(7) A qualified supervisor may perform the functions of a cashier provided the functions are not incompatible with proper separation of duties. A supervisor shall not operate from another cashier or supervisor's imprest inventory.

(8) The assets for which each cashier is responsible shall be maintained on an imprest basis. A cashier shall not permit any other person to access his or her imprest inventory. Cashier functions shall include the following:

- (a) Perform check consolidations, total or partial redemptions, or substitutions for patrons;
 - (b) Receive cash, authorized cash equivalents and authorized electronic transfers from patrons in exchange for currency or sports wagering vouchers;
 - (c) Perform deposit and withdrawal transactions for sports wagering accounts, where supported;
 - (d) Process exchanges with cashiers, supported by documentation with signatures thereon, for the effective segregation of functions in the cashiers' cage;
 - (e) Receive sports wagering tickets or vouchers from patrons or authorized employees in exchange for cash; and
 - (f) Exchange and reconcile imprest funds used by attendants, including imprest change/pouch payout funds.
- (9) A licensed premises may consolidate the cashier functions, provided that the cashier is qualified to perform all functions and performs no functions incompatible with proper separation of duties.

Section 10.[Section 14.] Security and Surveillance.

- (1) The licensed premises shall have appropriate physical security and surveillance controls that:
- (a) Enable a suitable response to any security issue within the licensed premises; and
 - (b) Prevent any person from tampering with or interfering with the operation of any sports wagering or equipment.
- (2) The licensed premises shall establish provisions describing the duties and operation of its security department, which shall include details relative to the design, construction, and location of primary and secondary armored car routes, including provisions for the security of such routes.
- (3) Licensed premises shall install, maintain, and operate a surveillance system that has the capability to monitor and record continuous unobstructed views of all sports wagering and financial transactions as well as any dynamic displays of sports wagering information.
- (4) The surveillance system shall:
- (a) Have the capability to display all camera views on a monitor; and
 - (b) Record all camera views.
- (5) The surveillance system shall be maintained and operated from a surveillance operation room(s) or, when authorized by the racing commission, a secured location, such as a locked cabinet.
- (a) The surveillance operation room(s) shall be secured to prevent unauthorized entry.
 - (b) The location of the surveillance operation room or rooms shall ensure the interior is not visible to the public and employees who do not work in the surveillance room or rooms.
 - (c) Access to the surveillance operation room(s) shall be limited to surveillance personnel, the racing commission, and other persons authorized by the licensee.
 - (d) Surveillance operation room(s) access logs shall be maintained, recording all entries and exits.
 - (e) No personal recording devices of any kind are permitted in the surveillance operation room. This includes devices such as cameras, video recorders, and mobile phones.
 - (f) Surveillance operation room equipment shall have total override capability over all other satellite surveillance equipment.
- (6) If a power loss to the surveillance system occurs, alternative security procedures, such as additional supervisory or security employees, shall be implemented immediately.
- (7) The surveillance system shall record an accurate date and time stamp on recorded events. The displayed date and time shall not significantly obstruct the recorded view.
- (8) All surveillance employees shall be trained in the use of the equipment and wagering rules.
- (9) A periodic inspection of the surveillance systems shall be conducted. When a dedicated camera stops providing coverage in the racing and sports book or to sports wagering kiosks, the coverage failure and necessary repairs shall be documented, and repairs initiated within seventy-two (72) hours.
- (a) If a dedicated camera stops providing coverage, alternative security procedures, such as additional supervisory or security personnel, shall be implemented immediately.

- (b) The racing commission shall be notified of any coverage failure for more than twenty-four (24) hours and the alternative security measures being implemented.

(10) Surveillance coverage shall be provided for the following areas as follows:

- (a) For public entrances to the licensed facility for sports wagering:
 - 1. Each entrance shall have sufficient coverage of at least two (2) cameras that shall be able to positively identify each person entering; and
 - 2. Each security check-in point at the entrances shall have a dedicated camera to capture an unobstructed facial view of all persons entering the licensed premises.
- (b) For non-public entrances to the licensed facility for sports wagering, including loading docks and emergency exits:
 - 1. Each entrance shall have sufficient camera coverage, of at least two cameras with sufficient image quality to be able to positively identify each person entering;
 - 2. Employee entrances shall be secured either via the use of digitally controlled access systems or by in-person verification conducted by security; and
 - 3. Policies shall be in place requiring that employees entering the licensed facility for sports wagering be identifiable and of sufficient quality to positively identify each person entering.
- (c) For restricted areas of the licensed facility for sports wagering:
 - 1. All restricted areas shall have surveillance coverage sufficient that all persons in the area can be clearly identified;
 - 2. All restricted areas shall have sufficient coverage and resolution that all cash-handling and gaming equipment and currency and currency equivalents are identifiable;
 - 3. All restricted areas shall have additional camera coverage sufficient to provide asset protection as approved by the racing commission; and
 - 4. Access to coverage of the surveillance operation room is limited to senior management and the racing commission.
- (d) For all race and sports book locations:
 - 1. The surveillance system shall monitor and record general activities, to include the ticket writer and cashier areas, with sufficient clarity to identify the personnel performing the different functions; and
 - 2. All race and sports book locations shall have sufficient coverage that a patron can be tracked throughout the entirety of the race and sports book location.
- (e) For ticket writer stations:
 - 1. All ticket writer stations shall have sufficient coverage to identify currency amounts;
 - 2. Any ticket writer stations that can be utilized for placing wagers shall have surveillance coverage sufficient to identify the patron and employee involved in the transaction; and
 - 3. Surveillance personnel shall have access to the ticket writer stations to access transaction amounts.
- (f) For sports wagering kiosks, the surveillance system shall monitor and record activities occurring at each sports wagering kiosk with:
 - 1. Sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of sports wagering tickets or vouchers; and
 - 2. Accurate time stamps.
- (g) For the cage and vault:
 - 1. The surveillance system shall monitor and record activities occurring in each cage and vault area with:
 - a. Sufficient clarity to identify individuals within the cage and patrons and staff members at the window areas, and to confirm the amount of each cash transaction; and
 - b. Accurate time stamps.
 - 2. Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area; and
 - 3. The cage or vault area in which exchange and transfer transactions occur shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the amounts on the exchange and transfer documentation. Controls provided by a

computerized exchange and transfer system constitute an adequate alternative to viewing the amounts on the exchange and transfer documentation.

(h) For count rooms, the surveillance system shall:

1. Monitor and record with sufficient clarity a general overview of all areas where cash or cash equivalents may be stored or counted; and

2. Provide coverage of count equipment with sufficient clarity to view any attempted manipulation of the recorded data.

(i) All machines capable of dispensing cash shall have sufficient coverage to view the transaction and the currency amount being dispensed and the individuals at the machine.

(11) The licensed premises shall utilize an incident reporting system to document incidents and activities, as set forth in paragraph (a) of this subsection.

(a) Security and surveillance procedures approved by the racing commission shall be implemented for reporting:

1. An individual engaged in, attempting to engage in, or suspected of cheating, theft, embezzlement, or other illegal activities;

2. An individual possessing a firearm, electronic control device, dangerous weapon, or other device or object prohibited KAR Title 809;

3. An individual in the race and sports book location who is a prohibited person, the subject of a law enforcement contact by the licensee, or a potential victim of human trafficking.

4. All camera, system, or recording outages;

5. Any routine tasks accomplished by security or surveillance personnel at the request of another team; and

6. Any suspicious incidents observed.

(b) Any violation of the Act or KAR Title 809 shall be identified as such in the incident reporting system.

(c) The racing commission shall have real-time, read-only access to the incident reporting system.

(d) The incident reporting system shall be capable of generating reports that detail all incident types and such reports shall be delivered to the racing commission upon request.

(e) The incident reporting system shall be in an electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system.

(f) The incident reporting system shall document the following:

1. Assignment number of the incident;

2. Date and time;

3. Name and identification license of the individual covering the incident;

4. Nature of the incident; and

5. Resolution of the incident.

(g) All recordings required by this section shall be retained for a minimum retention period of ninety (90) calendar days. Suspected crimes, illegal activity, or detentions by security personnel discovered within the initial retention period shall be copied and retained for a time period not less than five (5) years.

JENNIFER WOLSING, General Counsel
For JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 a.m.

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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 controls for sports wagering on Licensed Premises.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules and controls for sports wagering on Licensed Premises, including the

floor plan, security, surveillance, sports wagering windows, sports wagering kiosks, sports wagers and vouchers, drop and count, and incident reporting.

(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 230.805 permits sports wagering at a licensed facility for sports wagering on Licensed Premises. This regulation establishes controls for sports wagering on Licensed Premises.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing clear and specific controls related to sports wagering on Licensed Premises. This protects the wagering public and the citizens of the Commonwealth and assists Licensees in properly conducting sports wagering on Licensed Premises.

(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:

(a) 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.

(b) Each track is allowed to contract with up to three (3) service providers. Therefore, up to 27 service providers may be affected this regulation.

(c) An unknown number of sports wagering license holders and sports wagering patrons also will 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: Licensees and sports wagering license holders must observe the regulatory requirements when offering sports wagering on Licensed Premises.

(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. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and license holders will have clear controls for sports wagering on Licensed Premises. Sports wagering patrons will benefit from properly operated sports wagering on Licensed Premises.

(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 impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.260(16), KRS 230.361, KRS 230.805

(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 administrative 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? This administrative regulation is not expected to generate cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

(d) How much will it cost the regulated entities for subsequent years? Compliance costs are uncertain. Licensees likely will incur costs to administer sports wagering on Licensed Premises in accordance 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 (+/-): Compliance costs are uncertain. Licensees

likely will incur costs to administer sports wagering on Licensed Premises in accordance with the regulations.

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 (Amended After Comments)

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

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.]~~

~~[(3)]~~(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.

~~[(4)]~~(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.

~~[(5)]~~(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 or any other U.S. state or jurisdiction, 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 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 upon request [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 within ten (10) days of the complaint being filed.

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 the 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.

JENNIFER WOLSING, General Counsel

For JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 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 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: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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 affects:

(a) 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.

(b) 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.

(c) 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 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 230.811(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.

(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 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 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.

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

809 KAR 10:007. Responsible gaming and advertising.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(15), (16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." This administrative regulation establishes a self-exclusion list and responsible gaming programs for sports wagering participants.

Section 1. Self-Exclusion List.

(1) Each operator licensee shall develop a commission-approved self-exclusion list for individuals who wish to be temporarily or permanently excluded from gambling in the Commonwealth for any reason, such as self-identification as problem or compulsive gamblers.~~[self-identify as problem or compulsive gamblers.]~~

(2) The commission shall consider at least the following factors in approving a self-exclusion list:

(a) The list shall include the names and other identifying information of the individuals who have self-excluded from sports wagering at a licensed premises and online via a licensee-specific Web site, mobile application, or by phone.

(b) Each licensee shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the licensed premises, online, or by phone.

(c) The notice shall be displayed at public entrances to the race and sports book location, and on the licensee's Web site or mobile application.

(d) The notice shall include information about the consequences of self-exclusion.

(3) The notice and its placement locations shall be approved by the racing commission. In approving the notice, the commission shall consider the notice's visibility and any other relevant factors.

(4) Each licensee shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

(5) The self-exclusion information collected shall include the individual's name, address, date of birth, and other identifying information as prescribed by the racing commission.

(6) The licensee shall provide any newly-collected self-exclusion information to the racing commission on an as-needed basis, but at least weekly[a monthly basis] and in a manner approved by the racing commission.

(7) The commission shall compile and maintain a comprehensive list of all voluntarily self-excluded persons.

(8) The comprehensive list shall include the self-exclusion information provided by each licensee.

(9) The comprehensive list shall be provided to all licensees and updated on an as-needed basis, but at least monthly.

(10) Pursuant to KRS 61.878(1)(a) and KRS 230.260, information collected under this Section shall be exempt from disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884.

(11) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce these administrative regulations or as required by law.

(12) Each licensee shall establish its own self-exclusion policy. Each policy shall be approved by the racing commission to ensure the best interests of sports wagering and compliance with KRS 230.260.

(13) The policy may cover how the licensee chooses to exclude individuals on the self-exclusion list. The policy may include identification and verification, forfeiture of prizes by voluntarily excluded persons, security personnel, technology, employee training, contractual obligations, or collaboration with other licensees.

(14) Each licensee shall review its self-exclusion policy at least once every two (2) years and amend it as necessary to ensure compliance with racing commission regulations and its effectiveness in achieving the purpose for which it is established.

Section 2. Responsible Gaming Program.

(1) A licensee shall develop and maintain a responsible gaming program that shall be approved by the racing commission pursuant to this section. The responsible gaming program shall require:

(a) Posting in a conspicuous place on the licensee's Web site or mobile application and in every licensed premises a sign that bears a toll-free number for a commission-approved organization that provides assistance to problem or compulsive gamblers;

(b) Providing commission-approved disclosures on the licensee's Web site or mobile application and informational leaflets or other similar materials at the licensed premises containing

information on the dangers associated with problem gambling;

(c) Providing patrons expressing concern with a gambling problem with information on commission-approved organizations that provide assistance to problem or compulsive gamblers;

(d) Providing notification that underage gambling is a criminal offense and that anyone who facilitates an underage person to place a sports wager has committed a criminal offense; and

(e) Ensuring that any request by a patron who wishes to self-exclude from sports wagering is honored by the licensee.

(2) In approving the organizations and disclosures listed in the previous subsection, the commission shall consider industry standards for responsible gambling and any other relevant factors.

(3) At least every (5) years, the licensee shall ensure that the licensee's responsible gaming program utilized in Kentucky is independently reviewed by a third party, pursuant to industry standards and performed by a third party approved by the racing commission. The racing commission may require the licensee to pay for the independent review.

Section 3. Advertising and Marketing.

(1) A licensee shall not allow, conduct, or participate in any false or misleading advertising or marketing concerning the licensee's sports wagering operations.

(2) A licensee shall only make representations concerning winnings that are accurate, not misleading, and capable of substantiation at the time of the representation. For purposes of this subsection, an advertisement shall be misleading if the advertisement makes representations about average winnings without equally prominently representing the average net winnings of all patrons.

(3) A licensee shall not advertise or market at elementary, middle, or high school activities. The prohibition in this subsection shall exclude an advertisement distributed via mass media, such as television, radio, print media, or the Internet, if the advertisement is not specifically directed toward (but may be incidentally received by) elementary, middle, or high schools.

JENNIFER WOLSING, General Counsel

For JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: November 15, 2023

FILED WITH LRC: November 15, 2023 at 11:15 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 and maintains a voluntary self-exclusion list, requires tracks and/or their service providers to provide a commission-approved responsible gaming program, and precludes false or misleading advertising.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning responsible gaming and advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct 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 statutes by ensuring that sports wagering providers establish a voluntary self-exclusion list for problem or compulsive gamblers. It also ensures that providers maintain a responsible gaming program. Finally, this regulation ensures that sports wagering providers avoid engaging in false or

misleading advertising practices.

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

(a) How the amendment will change this existing administrative regulation: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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:

(a) 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.

(b) 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.

(c) Additionally, there are an unknown number of patrons who will be impacted by the voluntary self-exclusion list and responsible gaming program.

(d) Finally, there is an unknown number of Kentuckians who will be impacted by the ban on false or misleading sports wagering advertising.

(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 offering sports wagering and service providers must establish a self-exclusion program and a commission-approved responsible gaming program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tracks will benefit from having clear standards for their voluntary self-exclusion and responsible gaming programs. Patrons will benefit from being able to take advantage of self-exclusion and responsible gaming programs. Kentuckians will benefit from the avoidance of false or misleading advertising.

(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(15) and (16) 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 administrative regulation will not generate cost savings for the first year.

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

(c) How much will it cost the regulated entities for the first year? Costs for the first year are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(d) How much will it cost the regulated entities for subsequent years? Costs for subsequent years are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing

a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

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 (+/-): Minimal, as set forth above in (4)(c) and (d).

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Policy

(Amended After Comments)

907 KAR 3:310. Community Health Worker services and reimbursement.

RELATES TO: KRS 309.460, 309.462, 309.464

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.648

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.648 requires DMS to seek a state plan amendment and implement covered services on behalf of community health workers. This administrative regulation establishes community health worker services and reimbursement.

Section 1. Definitions.

(1) "Certified community health worker" has the same meaning as in KRS 309.460(2).

(2) "Department" means the Department for Medicaid Services or its designee.

(3)(a) "Medical intervention" means a treatment, procedure or other action taken to prevent or treat disease, or improve health in other ways.

(b) "Medical intervention" includes, but does not require the direct application of medical care.

(4) "Ordering provider" means a provider that is employed by or contracted with a sponsoring provider and who is:

(a) A physician;

(b) A physician assistant;

(c) An advanced practice registered nurse, including a certified nurse midwife~~;~~ ~~or~~

(d) A dentist;

(e) An optometrist; or

(f) Any other clinician type included by the department.

(5) "Sponsoring provider" means a provider listed or permitted to employ a certified community health worker pursuant to 205.648(2).

Section 2. Certified Community Health Worker Qualifications. In order to be eligible for reimbursement, a certified community health worker shall:

(1) Be a legal United States resident;

(2) Be employed as a certified community health worker in the state of Kentucky;

(3) Be at least eighteen (18) years of age; and

(4) Meet and maintain the certification or recertification requirements of 902 KAR 21:040.

(5) Provide services as approved by an ordering provider who is associated with a sponsoring provider.

(6)(a) Provide services on behalf of a sponsoring provider.

(b) For the purposes of this administrative regulation, a sponsoring provider of a certified community health worker shall include:

1. A behavioral health multi-specialty group; or

2. Any other provider or facility that has been approved pursuant to KRS 205.648(2)(b)10.

Section 3. Community Health Worker Services. (1) A community health worker service shall be related to a medical intervention that is outlined in the individual's care plan.

(2) Community health worker services shall include all services established within KRS 205.648(3)(a)-(d).

(3) Consistent with federal approval, the following services may be conducted by a certified community health worker. Any services provided shall be consistent with established or recognized healthcare standards:

(a) Health system navigation and resource coordination, which may include:

1. Helping a recipient find Medicaid providers to receive a covered service;

2. Helping a recipient make an appointment for a Medicaid covered service;

3. Arranging transportation to a medical appointment;

4. Attending an appointment with the recipient for a covered service; or

5. Helping a recipient find other relevant community resources such as support groups.

(b) Health promotion and coaching, which may include providing information or training to recipients that make positive contributions to their health status, such as:

1. Cessation of tobacco use;

2. Reduction in the misuse of alcohol or drugs;

3. Improvement in nutrition;

4. Improvement of physical fitness;

5. Family planning;

6. Control of stress; or

7. Pregnancy and infant care, including prevention of fetal alcohol syndrome.

(c). Health education and training to train or promote to recipients methods and measures that have been proven effective in avoiding illness or lessening its effects, including:

1. Immunizations;

2. Control of high blood pressure;

3. Control of sexually transmittable disease;

4. Prevention and control of diabetes;

5. Control of toxic agents;

6. Occupational safety and health; or

7. Accident prevention.

Section 4. Ordering and Delivery of Community Health Worker Services. Community health worker services shall be:

(1) Ordered or approved by an ordering provider; and

(2) Delivered according to a care plan approved by the ordering provider.

Section 5. Documentation of Community Health Worker Services. Community health worker services shall be:

(1) Signed and documented by the certified community health worker;

(2) Approved by the ordering provider~~[billing supervisor]~~ of the sponsoring~~[connected]~~ provider; and

(3) Recorded and kept in the patient medical record.

Section 6. Reimbursement for Community Health Worker Services. Reimbursement for community health worker services shall be via appropriate codes that comply with relevant existing rate methodologies utilized by the department and established by state and federal law. As appropriate, billing and reimbursement information shall be included in the Medicaid

Physician Fee Schedule established in 907 KAR 3:010~~[as established on the Community Health Worker Reimbursement Table]~~, available at:

<https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Section 7. There shall be no reimbursement under this administrative regulation available for a certified community health worker~~[that is directly]~~:

(1) When performing a specific service that is funded by a federal grant, and only for that specific federally grant-funded service; or

(2) That is directly employed by a managed care organization.

Section 8. A community health worker service, by itself, shall not generate a wrap payment, including wrap payments for the following provider types:

(1) Federally qualified health center (FQHC);

(2) Rural health clinic (RHC); or

(3) Certified community behavioral health clinic (CCBHC).

Section 9. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The coverage provisions and requirements established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage.

Section 12. Appeal Rights. An appeal of a department decision or adverse action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2023

FILED WITH LRC: November 13, 2023 at 1:25 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 Department for Medicaid Services (DMS) policies relating to the provision and reimbursement of community health worker services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish, clarify, and enhance DMS policies relating to certified community health worker services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing a statutory requirement and federal approval to provide community health

worker services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation implements a federal approval required to be sought by recent state legislation.

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

(a) How the amendment will change this existing administrative regulation: The Amended After Comments version of this administrative regulation amends the administrative regulation to allow optometrists to function as an ordering provider. In addition, the criteria for being an ordering or sponsoring provider is expanded to potentially allow for additional types of clinicians or facilities to order or request reimbursement for community health worker (CHW) services. Language is also added to clarify when a federally funded CHW is not allowed to bill for Medicaid services.

(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: The Department for Medicaid Services, managed care organizations (MCOs), individuals who may seek to become certified community health workers, providers employing community health workers, and Medicaid recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers and community health workers will need to comply with existing law and this administrative regulation in order to be eligible for reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate providers will incur costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Certified community health worker services will be eligible for reimbursement.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied within this administrative regulation as all individuals are eligible for community health worker services.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.648

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(Amended After Comments)

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

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

STATUTORY AUTHORITY: KRS 230.826

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

Section 1. Definitions.

(1) "Behavioral health professional" means:

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

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

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

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

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

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

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

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

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

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

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

or

(l) A licensed clinical alcohol and drug counselor as defined by KRS 309.0832.

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

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

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

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

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

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

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

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

(h) A certified alcohol and drug counselor as defined by KRS 309.0832.

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

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

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

~~(5)](6)] "Community mental health center" or "CMHC" or "center" means a program established pursuant to KRS Chapter 210.~~

~~(6)](7)] "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

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

(a) A CMHC licensed in accordance with 902 KAR 20:091;

(b) A BHSO licensed in accordance with 902 KAR 20:430;

(c) A behavioral health professional;

(d) A behavioral health professional under clinical supervision;

~~(e) A health department established pursuant to KRS 211.185; [or]~~

~~(f)](e)] A federally designated 501(c)(3) organization; or~~

(g) A Certified Community Behavioral Health Clinic (CCBHC) participating in the Center for Medicare and Medicaid Services Section 223 CCBHC Demonstration.

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

(a) Providing support to agencies, groups, organizations, and persons that provide education, assistance, and counseling to persons and families who experience difficulty as a result of substance use disorder, or problem or compulsive gambling;

(b) Promoting public awareness of, and providing education about, problem gambling;

(c) Establishing and funding programs to certify problem gambling counselors; or

(d) Promoting public awareness of assistance programs for those experiencing consequences of problem gambling.

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

(a) In writing to 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(b) Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 4. Monitoring. (1) Recipients of funds from the Kentucky problem gambling assistance account shall:

(a) Establish and conduct evaluation measures that assess the efficacy of services provided;

(b) Collect and report the following data:

1. The number of individuals served;

2. Types of services provided to individuals served; and

3. Detailed costs for the number of individuals served and the services provided during the reporting period.

(c) Submit quarterly reports meeting the requirements established in this section of the administrative regulation:

1. To the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Problem Gambling Assistance Account, 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

2. Via electronic mail to kyproblemgamblingassistance@ky.gov.

Section 5. Treatment professional certification. (1) Qualified behavioral health

providers seeking certification from a cabinet-approved, nationally or internationally recognized certifying organization shall:

(a) Have at a minimum a bachelor's degree or equivalent in a behavioral health field;

(b) Have current Kentucky licensure in substance use disorder counseling, or mental health counseling or equivalent work experience;

(c) Complete ~~thirty (30)~~~~fifteen (15)]~~ hours of training on ~~problem gambling[problematic and disordered gaming]~~ prevention, assessment, and co-occurring issues for individuals and families by an approved trainer;

(d) Complete ~~100[fifty (50)]~~ direct contact hours addressing the issues, prevention and early intervention, co-occurring and when to refer for individuals and families ~~who experience problem gambling[with a gaming disorder];~~

(e) Complete a minimum of four (4) consultation hours with an approved consultant from the certifying organizations board;

(f) Complete all application materials, ethical statement, and directory authorization forms required by the certifying organization;

(g) Pass any examination required by the cabinet-approved certifying organization; and

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

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

Section 6. Department Responsibilities. (1) The department shall publish on the department website:

(a) Certified treatment providers for individuals experiencing the consequences of problem gambling; and

(b) Problem gambling treatment and recovery services and resources;

Section 7. Incorporation by reference. (1) "Kentucky Gambling Assistance Application", 07/23, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

ERIC C. FRIEDLANDER, Secretary

KATHERINE R. MARKS, Ph. D., Commissioner

APPROVED BY AGENCY: November 6, 2023

FILED WITH LRC: November 13, 2023 at 1:25 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 amended administrative regulation establishes the requirements and standards for the administration of the Kentucky problem gambling assistance fund.

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS. 230.826 by establishing the standards and requirements for the administration of the Kentucky problem gambling assistance fund.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation expands the definitions of behavioral health profession and behavioral health professional under clinical supervision to include licensed clinical and certified alcohol and drug counselors. This inclusion allows them included as eligible entities for the application for funds from the Kentucky Problem Gambling account.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation was necessary to expand the definitions of behavioral health profession and behavioral health professional under clinical supervision to include licensed clinical and certified alcohol and drug counselors. This inclusion allows them included as eligible entities for the application for funds from the Kentucky Problem Gambling account.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will ensure effective administration of the statutes through the inclusion of statutorily defined professions as eligible entities for the application of funds from the Kentucky Problem Gambling account.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the Kentucky Council on Problem Gambling, over 100,000 Kentucky adults exhibit problem gambling traits, and more than 45,000 Kentucky adults struggle with addiction to gambling. Currently, there are seven practicing mental health professionals certified to treat gambling disorder in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will need to meet the criteria established in the statute and submit the required application and supporting documentation for an opportunity to receive funding.

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

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

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

BOARDS AND COMMISSIONS
Board of Accountancy
(Amendment)

201 KAR 1:190. Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261

STATUTORY AUTHORITY: KRS 325.240(2), 325.270(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants and authorize the board to, by administrative regulation, promulgate standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, and the procedures and fees associated with the administration of the examination.

Section 1. Definitions.

(1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university that includes auditing, tax, accounting standards, principles, or processes.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepares and grades the Uniform CPA Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title, an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course in which a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects, of which twenty-seven (27) semester hours consist of accounting courses.

(8) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA Examination.

(9) "Official transcript" means an official document issued by a college or university that:

(a) States the college course work completed, degrees awarded, and the date the degree was awarded; and

(b) Contains an authorizing signature or seal.

(10) "Prometric or its successor" means the testing service in charge of administering the Uniform CPA Examination.

(11) "Quarter hour" means 66/100ths of a semester hour.

(12) "Uniform CPA Examination" means the computer-based version of the licensure examination administered by the AICPA.

Section 2. Examination. The board shall use the Uniform CPA Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade for licensure.

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score.

(1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section.

(3) An exam candidate shall not sit for the same section of the examination until after the candidate receives a score for that section.

(4) If an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have a thirty (30)~~[an eighteen (18)]~~ month period in which to obtain a passing score on the remaining sections of the examination. The thirty (30)~~[eighteen (18)]~~ month period shall begin on the date that the first passing score is released by NASBA and concludes on the date the candidate sits for the final test section passed, regardless of when the score for that final test section is released.

(a) Failure to receive a passing score on the remaining sections of the examination within the thirty (30)~~[eighteen (18)]~~ months shall result in the expiration of the initial passing score, but not other sections passed during that thirty (30)~~[eighteen (18)]~~ month period.

(b) All sections of the examination shall be passed during a thirty (30)~~[an eighteen (18)]~~ month time period for the candidate to be considered to have passed the examination.

(5) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate. The extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam section. Additional extensions may be granted by the board, for good cause, upon a showing of circumstances beyond the candidate's control.

Section 4. Initial Examination Applicants.

(1) Initial examination application process.

(a) An initial examination applicant shall submit a complete, notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate if the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out-of-state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate if the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate if the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and
2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational requirements.

(a) Educational requirements shall be completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations when the degree was granted:

- a. Middle States Association of Colleges and Schools;
- b. North Central Association of Colleges and Schools;
- c. New England Association of Schools and Colleges;
- d. Northwest Association of Schools, Colleges and Universities;
- e. Southern Association of Colleges and Schools;
- f. Western Association of Schools and Colleges; or

2. The board shall accept course credit hours awarded by a college or university after January 1, 2020 that is not accredited by one (1) of the associations listed in paragraph (a) 1. of this subsection, if those course credit hours receive credit from a college or university accredited by one (1) of the associations specified in paragraph (a) 1. of this subsection following the enrollment of the student in the accredited college or university. This exception does not apply to the course credits listed in subsection (3) of this section; or

3. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)3. of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as established in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded, four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)

(a) An applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) An applicant who received CLEP credit~~[, or credit hours]~~ from a college or university ~~[for completing an internship or co-op program]~~ may use a maximum of six (6) of those credit hours ~~[from each program for a total of twelve (12) hours]~~ solely toward satisfying the 150 hour requirement in KRS 325.261(5).

Section 5.

(1)

(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for the board's review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered into the data bank operated by NASBA. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam.

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate, which states the candidate is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.

(4)

(a) A candidate shall have six (6) months from the date of issuance by NASBA of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board, or at the conclusion of the six (6) month period, whichever comes first.

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexam application as established in Section 9 of this administrative regulation.

(5)

(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon and require the candidate to submit a reexam application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct.

(1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam Applicants.

(1) Upon request, the board shall mail a Reexam Application for the Uniform CPA Exam to every candidate who fails to pass the Uniform CPA Examination.

(2) The reexam application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam application is not delivered by the United States Postal Service.

(4)

(a) The applicant shall:

1. Indicate since the approval of the applicant's initial application if the applicant has been convicted, pleaded guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the reexam application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

(b) The reexam application shall be received in the board's office prior to the reexam candidate being considered eligible to sit for any section of the exam.

(5)

(a) The candidate shall return the completed reexam application with the reexam fee.

(b) The reexam fee shall be thirty (30) dollars per section. The reexam fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(6) A reexam candidate who fails to comply with the requirements of this section shall not be allowed to sit for reexam.

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam application.

(8) The reexam candidate shall comply with the requirements of Sections 6 through 8 of this administrative regulation.

Section 10. Examination Grades. Kentucky exam candidates shall receive their scores via the NASBA Web site: Nasba.org.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", 2023;

(b) "Reexam Application for the Uniform CPA Examination", 2023; and

(c) "Exam Applicant Special Accommodations Request Form", October 2014.

(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. to 4:30 p.m. or at <https://cpa.ky.gov/Pages/Forms.aspx>.

DAVID R. PRICE, President

APPROVED BY AGENCY: September 21, 2023

FILED WITH LRC: October 20, 2023 at 9:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January

24, 2024 at 1 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, email joep.donohue@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the elements, procedures and prerequisites related to the uniform examination required for licensure as a certified public accountant ("CPA").

(b) The necessity of this administrative regulation: To insure that CPA candidates are aware of important information related to the content, requirements, and administration of the Uniform CPA Examination ("Exam").

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.270(1) and (2) require the Kentucky State Board of Accountancy ("Board") to authorize examinations for individuals seeking to become certified public accountants, and permit the Board to, by administrative regulation, adopt examination policies and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation notifies the public, CPA candidates, and potential CPA candidates of the content, requirements, and administration of the uniform examination required for licensure as a CPA.

(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: For nearly 20 years, since the launch of the computer-based CPA Exam in early 2004, candidates have had 18 months from the date of passing the first section of the Exam to complete the remaining three sections without losing credit. All 55 U.S. states and territories adopted that rule. With the disruptions of the COVID pandemic, the reduction of candidates in the CPA pipeline, and the increased workload of firms and individual practitioners, there has been increasing interest in providing candidates and firms relief by extending the period of conditional exam credit. On April 21, 2023, the National Association of State Boards of Accountancy ("NASBA") adopted an amendment to Uniform Accountancy Act Model Rule 5-7 increasing the length of conditional credit from 18 months to 30 months. The Board recently voted to adopt that change for Kentucky candidates, and to remove the current limit of college internship hours that can be used to satisfy the educational requirements to sit for the Exam and become licensed as a CPA.

(b) The necessity of the amendment to this administrative regulation: Providing an additional year of conditional credit to candidates for Exam sections passed provides more flexibility to those seeking licensure as a CPA. The additional time also provides greater latitude to firms and candidates as they negotiate the demands of today's complex career environment. The approved rule further seeks to provide uniformity among jurisdictions on the timeframe of existing Exam credits. Moreover, the elimination of the cap of internship hours that can be used to satisfy educational requirements for CPA candidates will also provide flexibility and

relief to candidates without sacrificing any of the knowledge, skills or experience needed to become a CPA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authority provided to the board by KRS 325.270(1) and (2) to adopt regulations governing the administration of the Exam.

(d) How the amendment will assist in the effective administration of the statutes: The update provided by the amendment improves the statutes' administration by easing some of the unanticipated burdens currently facing Kentucky CPA candidates without creating any risk to the public or consumers of CPA services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the Kentucky candidates taking the Exam. The number of candidates taking the Exam through the Kentucky Board has averaged approximately 645 people per year over the last four years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment's additional year of conditional exam credit and removal of the cap of qualifying college internship credits will provide more flexibility to those candidates seeking licensure as a CPA.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no additional fee imposed by this proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since the standards set forth in this regulation govern all Kentucky CPA candidates.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2), KRS 325.270(1) and (2), and KRS 325.261(4).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No increase in current costs is expected.

(d) How much will it cost to administer this program for

subsequent years? No increase in expenses for future years is anticipated.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: No financial impact is expected to occur as a result of the proposed amendments to this regulation.

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? No additional costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No additional costs are anticipated.

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

Cost Savings (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: No financial impact is expected to occur as a result of the proposed amendments to this regulation.

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS [164.772, 194A.540, 314.041(14)](14)], 314.042(6), 314.051(14)](14)], 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of KRS Chapter 314 or 201 KAR Chapter 20. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201

KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Submitting a criminal record check completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and including payment of any required fee of the KSP and the FBI;

(d) Submitting 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);

(e) Submitting a letter of explanation that addresses each conviction, if applicable;

(f) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(g) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(14)[(14)] for registered nurses and KRS 314.051(14)[(14)] for licensed practical nurses as approved by the board.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

~~[3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.]~~

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1)(a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;
2. Marriage certificate;
3. Divorce decree; or
4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of reinstatement of the license.

AUDRIA DENKER, President

APPROVED BY AGENCY: October 19, 2023

FILED WITH LRC: November 2, 2023 at 9:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2024 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 January 15, 2024, 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 January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, (502) 338-2851, email
Jeffrey.Prather@ky.gov. Or submit a comment at:
<https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to reinstate a Registered Nurse (RN) or Licensed Practical Nurse (LPN) license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to promulgate an administrative regulation concerning reinstating an RN or LPN 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 reinstating an RN or LPN 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 removes references to a repealed statute, KRS 164.772 and updates other statutory references to KRS 314.041 and 314.051.

(b) The necessity of the amendment to this administrative regulation: To remove or update references incorrect statutory references.

(c) How the amendment conforms to the content of the authorizing statutes: It removes or updates references incorrect statutory references.

(d) How the amendment will assist in the effective administration of the statutes: By removing confusing or obsolete statutory references.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost beyond the \$235 reinstatement fee in 201 KAR 20:240, Section 1(l).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repealed statute will no longer be used during the review of the applicant's reinstatement.

(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:

(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? Tiering is not applied.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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 (+/-): N/A.

Expenditures (+/-): N/A.

Other Explanation: N/A.

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

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

(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.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

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

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 5.

Section 1. Definitions.

(1) "Agent fees" means all fees established in regulation that a license agent may charge in a transaction in addition to the product price for the licenses, permits, items, or services purchased.

(2) "Agent commission" means the fee an agent is permitted to

charge in addition to the product price that represents the agents profit for the transaction.

~~(3) [(4)]~~ "Commission" is defined by KRS 150.010(6).

~~(4) [(2)]~~ "Commissioner" is defined by KRS 150.010(7).

~~(5) [(3)]~~ "Department" is defined by KRS 150.010(11).

~~(6) [(4)]~~ "License agent" means a person, government entity including the department, business, or organization authorized to sell and issue licenses and conduct other transactions for the department.

(a) "Governmental agent" means a license agent who is a county clerk or a federal, state, or local governmental entity.

(b) "Out-of-state agent" means a license agent who sells licenses at a location outside the boundaries of Kentucky.

~~(7) [(5)]~~ "License stock" means the blank paper upon which licenses are printed.

~~(8) "Payment processing fee" means a fee charged for the processing of payments.~~

~~(9) "Product price" means the price of a license, permit, item, or service without any agent fees.~~

~~(10) [(6)]~~ "Transaction" means the application for a hunt or the purchase or sale of a license, permit, item, product, or service.

~~(11) [(7)]~~ "Vendor" means a person, organization, or business under contract with the department to provide the operation, storage, security, maintenance, and support of the solutions required to deliver department-defined goods and services.

~~(12) [(8)]~~ "Operational Cost" means the fees charged for the operation, storage, security, maintenance, and support of the applicable sales solutions.

~~[(9) "Issuance Fee" means the fee charged for the sale and delivery of a license, permit, product, or service.]~~

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on, January 31, 2024, at 11:30 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through, January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes definitions for terms used within 301 KAR, Chapter 5.

(b) The necessity of this administrative regulation: This regulation is necessary to define terms used throughout 301 KAR, Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits established by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By defining specific terms used in the other regulations within 301 KAR, Chapter 5, it will assist the effective administration of the statutes by clarifying the specific meanings of the terms in one consolidated location.

(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: Terms that are no longer applicable have been removed and additional terms that are to be utilized are included.

(b) The necessity of the amendment to this administrative regulation: Changes are being made to other regulations in 301 KAR, Chapter 5 to include terms that need to be defined.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How the amendment will assist in the effective administration of the statutes: By defining the new terms to be used in the other regulations within 301 KAR, Chapter 5, it will assist the effective administration of the statutes by clarifying the specific meanings of the terms in one consolidated location.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 512 license agents who contract to sell licenses and permits; these include 80 county clerks, 8 other government entities such as state parks, and 424 retail businesses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation only addresses definitions of terms and therefore does not require any specific action for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation only addresses definitions of terms and therefore does not require any cost for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities do not require any sort of action for compliance. The benefit to the entities will be a clear understanding of the defined terms.

(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: No continuing additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game Fund.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. All impacted entities are treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources and any entities that participate as license agents, including some county clerks and state parks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195

(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 directly impact 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 directly impact revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no added cost to administer these amendments.

(d) How much will it cost to administer this program for subsequent years? There will be no added cost to administer these amendments 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? These amendments will not impact cost savings.

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

(c) How much will it cost the regulated entities for the first year? There will be no cost.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost.

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

Cost Savings (+/-): n/a

Expenditures (+/-): n/a

Other Explanation: n/a

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

TOURISM, ARTS AND HERITAGE CABINET **Department of Fish and Wildlife Resources** **(Amendment)**

301 KAR 5:010. License agent applications and agreements.

RELATES TO: KRS 150.175

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department license agent.

Section 1. License Agent Applications and Agreements.

(1) Before receiving authorization to serve as license agents, persons, government entities other than the department, businesses, or organizations shall:

(a) Complete and submit a License Agent Application Form;

(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the License Agent Contractual Agreement, 2023 Edition; and

(c) Complete an Electronic Funds Transfer Request Form that authorizes the department or its vendor to make electronic fund

transfers from an account into which the license agent shall deposit the proceeds from transactions, or establish and agree upon the process for license agent-initiated fund transfers to the department or vendor.

(2) State agencies, other than the department, serving as license agents shall remit payment through the state accounting system.

(3) The department shall not appoint as an agent a business that does not:

(a) Possess a valid federal identification number;

(b) Possess a Kentucky sales tax number, except if it is outside Kentucky; and

(c) Post a surety bond of \$5,000 if it is an out-of-state, private business.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "License Agent Application Form", 2023;

(b) Electronic Funds Transfer Request Form, 2023; and

(c) License Agent Contractual Agreement, October 2023 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a)

https://fw.ky.gov/Licenses/Documents/LICENSE_AGENT_APPLICATION_FORM.pdf for the "License Agent Application Form";

(b)

https://fw.ky.gov/Licenses/Documents/EFT_TRANSFER_FORM.pdf for the "Electronic Fund Transfer Authorization Form"; and

(c) <https://fw.ky.gov/Licenses/Documents/licenseagentagreement.pdf> for the "License Agent Contractual Agreement."

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2024, at 1:00 p.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the methods for application and operation of license agents.

(b) The necessity of this administrative regulation: This regulation is necessary to create a network of license agents to partner with the department to effectuate the sale and distribution of the department's licenses, permits, and other items sold by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to name license agents and promulgate regulations to establish which

items to be sold, the fees retained by agents, and other matters related to the sale of those items.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the rules for license agent applications and agreements as authorized in KRS 150.195.

(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 regulation establishes updated contractual language in the document incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the license agent application and contract process to be consistent with changes in other 301 KAR, Chapter 5 regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations establishing license agents, the fees retained, and matters relating to license sales.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in contracting with parties to become and remain license agents consistent with the requirements of the other regulations in 301 KAR, Chapter 5.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All license agents which currently is numbered at 510 throughout the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to complete updated paperwork.

(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 minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to participate as license agents which will increase customer traffic into their establishments and generate a nominal commission of three (3%) of the product price.

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

(a) Initially: There will no added costs to the agency initially.

(b) On a continuing basis: There will be no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not increase any fees. All related fees are established in 301 KAR 5:020.

(9) TIERING: Is tiering applied? Tiering is not applied as all entities are treated equally as there is no limitation regarding how many entities can be license agents or participate in the couponing sponsorship opportunity.

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? County clerks, State Parks, the Department of Fish and Wildlife Resources and any other divisions that choose to participate as license agents.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not directly impact the agency's expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not increase any costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? This amendment will not increase any costs to administer 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 regulation will not result in any direct cost savings.

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

(c) How much will it cost the regulated entities for the first year? This regulation will not impact the cost to entities.

(d) How much will it cost the regulated entities for subsequent years? This regulation will not impact the cost to 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 amendment will not have a direct economic impact. The economic portions of the license agent program are found in other regulations.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 45.345[45A.097], 64.840, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires the department to promulgate administrative regulations governing the issuance of licenses and permits. This administrative regulation establishes the requirements for issuing licenses and permits, electronically reporting license and permit sale data and revenue, and suspending or revoking license agent status.

Section 1. Issuing Licenses and Permits.

(1) A license agent shall issue a license or permit to a person who completes the registration process with the agent and pays the appropriate license or permit fee as established in 301 KAR 5[3]:022 and applicable ~~agent fees~~[issuance and operational fee] as established in this administrative regulation.

(2) A license agent shall not knowingly enter false information while processing a license, permit, or other transaction.

Section 2. Agent ~~Fees~~[Issuance Fee] and Depositing of Funds.

(1) The license agent shall ~~be permitted to charge and retain the following agent fees, if applicable:~~[retain as an issuance fee:]

(a) ~~An agent commission of three~~[Three] (3) percent of the ~~product price; and~~

(b) ~~Payment processing fees consistently charged by license agents for non-cash payments for all products, both department products and non-department products, through the ordinary course of business, including those identified in KRS 45.345(2) for state agencies, KRS 64.840(3) for county agencies, and such fees incurred by license agents that are private entities;~~[total sale; or

(b) ~~Print or display, on the initial license or permit issued, a coupon or advertisement, pursuant to a department sponsorship as established in KRS 45A.097, in lieu of retaining the applicable issuance fee.]~~

(2) A license agent shall deposit ~~the full amount of the product price~~[transaction fees, less the issuance fee established in subsection (1) of this section,] into the account established in 301 KAR 5:010.

~~[(3) A license agent shall not require or encourage a particular payment method.]~~

Section 3. Electronic Transfer of Funds to the Department.

(1) The department or its vendor shall provide each license agent with a schedule of dates when electronic fund transfers will be initiated.

(2) On the day of a scheduled electronic fund transfer, a license agent shall have sufficient funds in the account to cover the amount of the transfer.

(3) A license agent shall contact the department or its vendor prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4. Voiding Licenses and Permits.

(1) A license agent may, within four (4) hours of issuing a license or permit, void a license or permit if the purchaser:

- (a) Discovers that the issued license or permit is incorrect;
- (b) Will not pay for the license or permit; or
- (c) Refuses to accept the license or permit.

(2) An agent shall:

(a) Ensure that a license or permit established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit.

(3) A license agent shall refund license or permit cost as established in 301 KAR 5:030, Section 3(2)(a).

Section 5. Suspensions and Revocation of Agent Status.

(1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. KRS 150.195; or

2. A requirement of KAR Title 301.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits an offense for which the license agent has been previously suspended;

(b) Does not deposit the required funds in the agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing the agent bank account;

(d) Closes the business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling the account; or

(e) Knowingly issues a license or permit containing false information.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or the commissioner's designee to show cause why the agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

(a) Allow the department access to financial records dealing with license and permit sales; and

(b) Immediately pay all funds owed to the department.

Section 6. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B. If the suspension or revocation decision is upheld by the commission, the agent may then appeal the decision to the Franklin Circuit Court. An appeal shall be in accordance with KRS Chapter 13B and KRS 150.195.

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B.

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on, January 31, 2024, at 11:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through, January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for agents of the department to sell and issue the department's licenses and permits.

(b) The necessity of this administrative regulation: This regulation is necessary to define legal sales parameters to protect the interests of agents, customers and the department in

implementing 301 KAR, Chapter 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By defining processes for selling licenses and permits, it will assist the effective administration of the statutes authorizing the department and its agents to transact sales to fund the department's operations.

(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: Updated agent fees to include statutorily permissible fees and remove conflict with KRS 45.345(2) and KRS 64.840(3) while placing private entities on even footing with public entities that are acting as license agents.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to avoid conflict with KRS 45.345(2) and 64.840(3) and to retain and attract entities to be license agents by placing private entity license agents on even footing as public entities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.195 authorizes the department to promulgate regulations to provide for the issuance of licenses and permits issued by the department.

(d) How the amendment will assist in the effective administration of the statutes: KRS 150.195 authorizes the department to partner with license agents to assist in sales. This amendment will improve the department's ability to secure and retain license agents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department currently has 510 license agents who contract to sell licenses and permits; these include 79 county clerks, 8 other government entities such as state parks, and 423 retail businesses. These license agents will be impacted as well as individuals who make purchases.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require changes to software code by the department but does not require any specific action from agents for compliance. The agents will be permitted to charge fees to recoup payment processing costs charged to them by financial institutions. The individual customers will be required to pay any applicable costs and may be required to pay the nominal increase to cover the potential payment processing costs as applicable to their payment method and the license agent processing the transaction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Changes will not require any cost for compliance on the part of license agents. Individual customers may need to pay the payment processing costs as applicable to their payment method and the license agent processing the transaction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the license agents will be they will actually receive the full agent commission of three percent (3%) of the product price rather than having it reduced by payment processing fees charged by financial institutions. The individual purchasers will benefit by continued and increased access to license agents.

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

(a) Initially: Changes to computer software code will require an estimated \$3,000 in staff costs.

(b) On a continuing basis: No continuing additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendments to this regulation will not increase fees or funding for license agents.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment may indirectly increase fees insofar as the license agents will be able to pass on financial fees charged to the agent by financial institutions for processing non-cash payment methods, to the individuals who choose to purchase KDFWR products with payment methods that result in fees to the vendor for payment processing.

(9) TIERING: Is tiering applied? No tiering is applied. All impacted entities are treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources and any entities that participate as license agents, including private businesses acting as license agents, some county clerks and state parks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195, KRS 64.840, KRS 45.345

(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 net revenue gained.

(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 net revenue gained in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no added cost to administer these amendments.

(d) How much will it cost to administer this program for subsequent years? There will be no added cost to administer these amendments in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation will decrease expenditures for local and state entities insofar as they will no longer be required to pay transaction fees from their own budgets. License holders may incur additional expenditures equal to the savings realized by the license agents for processing non-cash transactions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Subsequent year cost savings will continue as with the first year.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs to the license agents. License holders who choose to use non-cash payment methods may incur additional cost associated with payment processing fees.

(d) How much will it cost the regulated entities for subsequent years? Subsequent years will have the same cost as the first year.

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

Cost Savings (+/-): License agents may realize cost savings by

passing on the payment processing fees to the individual purchasers.

Expenditures (+/-): License holders who choose to use non-cash payment methods may incur additional cost associated with payment processing fees.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There will be no major economic impact in aggregate as the cost savings realized by agents will be equal to the additional expenditures of the license holders who chose to purchase with non-cash payment from agents who choose to recoup the payment processing fees.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:200. Special commission permits for incorporated nonprofit wildlife conservation organizations.

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes Kentucky Department of Fish and Wildlife Resources [the department] to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization for fundraising if proceeds of the sale are used in Kentucky. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions.

(1) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a stated purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.;

(b)

1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Is an affiliated regional, state, or local chapter of a parent organization that meets the requirements of subsection (1)(b) of this section.

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus all expenses directly attributable to the sale of the permit.

(3) "Project" means an enterprise designed to achieve stated purposes, which shall conserve and enhance fish and wildlife resources within Kentucky by enhancing habitat or providing opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.

(4) "Special commission permit" means a [species-specific] permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization for fundraising that allows the assigned permit holder [recipient], to perform the acts applicable to the specific game designated by the permit [depending on the species listed on the permit, to harvest]:

(a) For deer permits, harvest one [One] (1) additional deer of either sex [per license year];

(b) For wild turkey permits, harvest one [One] (1) additional turkey of either sex [per license year];

(c) For elk permits, harvest one [One] (1) elk of either sex except that an individual shall harvest no more than one (1) elk total per license year;

(d) For black bear permits, harvest one (1) additional black bear of either sex; or

(e) [(d)] For waterfowl permits, receive priority hunt dates and location selection for public area waterfowl hunting [Up to a daily bag limit of waterfowl per day].

Section 2. Issuance and Sale of Special Commission Permit.

(1) There shall be no more than ten (10) special commission permits issued per species per license year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species by submitting, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the following information:

(a) Organization Name;

(b) Mailing address;

(c) Contact person's name;

(d) Phone number;

(e) Email Address;

(f) Permit types requested;

(g) Proposed method of selling the permits;

(h) Estimated dollar amount to be raised through the sale of permits requested;

(i) Rationale for the estimate;

(j) Fund-raising history;

(k) Prior experience with conservation projects;

(l) Description of proposed conservation project for which the funds will be used;

(m) Analysis of who will primarily benefit from the proposed project;

(n) List of tangible goods intended for purchase which will not be expended during the project, if applicable;

(o) Who will maintain ownership of any tangible items remaining after the project is completed, and how they will be used for the reasonable life of those items;

(p) Explanation of how the proposed project is intended to enhance fish and wildlife, habitats, fish and wildlife education, or fish and wildlife related recreation in Kentucky;

(q) Internal Revenue Service Employer Identification Number (EIN) under which the organization is applying; and

(r) Parent Organization name, if the organization is applying as an affiliated regional, state, or local chapter thereunder. [The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.];

(3) A national organization and its affiliated regional, state, and local chapters or branches shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(1) of this administrative regulation.

(4) No more than one (1) of each special commission permit type [per species] shall be awarded per distinct Internal Revenue Service Employer Identification Number (EIN) per year.

(5) [In addition to the completed application, the] The organization shall also submit, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission> the following supporting documents:

(a) A copy of the organization's articles of incorporation;

(b) A copy of the Internal Revenue Service determination letter establishing the organization's current tax-exempt status, including the applicant's Employer Identification Number (EIN);

(c) A copy of the organization's bylaws that state the purposes of the organization, if the purposes of the organization are not stated in the articles of incorporation; and

(d) A letter, dated within ninety (90) days of submission [the application], from the organization's parent organization, if applicable, stating that the chapter organization is in good-standing

and is recognized by the parent organization.

(6) The deadline for submission of the application and all supporting documents is May 1 of each year.~~[The completed application and accompanying documents listed in subsection (5) of this section shall be postmarked or delivered to the department by May 1 of each year.]~~

(7) Organizations~~[Applications]~~ shall be disqualified from eligibility~~[the awards process]~~ for the criteria listed in paragraphs (a) through (d) of this subsection:

(a) Failure to submit the required information~~[application]~~ and supporting~~[accompanying]~~ documents to the department by the deadline established in subsection (6) of this section;

(b) ~~[An incomplete or missing Special Commission Permits Application Form or accompanying documents required pursuant to subsection (5) of this section;~~

(c) ~~[Failure to qualify as an incorporated nonprofit wildlife conservation organization; or~~

~~(d) Failure~~~~[Beginning in 2022, the wildlife conservation organization applicant failed] to meet the following requirements:~~

1. A special commission permit awarded in the previous two (2) years;

2. Comply with the requirements of subsections (11)(b) and 11(c) of this section during the previous two (2) years; ~~[or]~~

3. Timely submit the following, during the previous two (2) years, for each permit received by the organization:

a. All~~[all of]~~ the information required by subsection~~[subsections]~~ ~~(11)(d) [and 11(f)] of this section; or~~

b. The name of person who purchased the permit; and
c. A statement that the organization attempted to obtain the hunter information required by subsection (11)(d) of this section but was not supplied all the information prior to the applicable submission deadline;~~[during the previous two (2) years.]~~

4. Timely submit the information required by subsection 11(f) for the calendar year for a given application; or

5. Submit by May 1 of the current calendar year, the information required for the previous calendar year by subsection 11(f) if the information was not provided timely.

(8) Prior to selecting organizations to receive special commission permits for the current year~~[recipients]~~, the Fish and Wildlife Commission shall review and consider all information and~~[applications and]~~ documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (7) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a) Past compliance; and

(b) History of funds generated.

(10) The Fish and Wildlife Commission shall select organizations to receive permits~~[permit recipients]~~ based on the information listed in subsection (9) of this section and the information contained within the organization's submission~~[application]~~.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit shall:

(a) Generate proceeds through the sale of each permit awarded;

(b) Use the proceeds [from the sale of the permits] within Kentucky, only for the project listed in the application, and not for ordinary operational costs of the organization;

(c) Remit to the department any proceeds from the sale of the permits that are not expended by the May 1 reporting deadline three (3) years after the submission deadline ~~[of the application]~~ for which the special commission permits were awarded;

(d) Submit to the department, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, the information listed in subparagraphs 1. through 4.~~[5.]~~ of this paragraph for the hunter to whom the permit shall be issued. Failure to submit the required information by the applicable deadline will result in no permit being issued.

1. Name;

2. Address;

3. ~~[Date of birth];~~

4. ~~[A copy of the hunter's valid Kentucky Hunting license; and~~

4.~~[5.]~~ For waterfowl, the requested location and date of the hunt.

(e) The information to be submitted, as established in paragraph (d) of this section, shall be submitted to the department no later than the following dates during the license year for which the permit is valid:

1. March 1 for turkey;

2. August 1 for elk;

3. August 1 for deer;~~[and]~~

4. September 1 for black bear; and

5. September 1 for waterfowl.

(f) Submit to the Department of Fish and Wildlife Resources, via the online Special Commission Permit Submission Portal at <https://app.fw.ky.gov/commission>, by May 1 of the following year, and each subsequent year until all funds generated by the sale of the permit are expended or remitted to the department, a report, subject to audit, that includes:

1. A financial statement containing:

a. Total funds raised from the sale of each permit;

b. A detailed list of expenditures directly attributable to the sale of each~~[the]~~ permit;

c. Net proceeds after expenditures used in fundraising, if applicable~~[profit];~~

d. A detailed list of expenditures attributable to the conservation project with a receipt for each expenditure~~[receipts attached]; and~~

e. Balance of funds remaining;

2. A summary of the conservation project; and

3. A synopsis of the project's impact in regards to the goals stated~~[in the application]~~.

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use.

(1) A special permit shall only be valid for the:

(a) Individual named on the permit;

(b) Game animals~~[Species of wildlife]~~ listed on the permit; and

(c) The first season for designated game animals~~[that species]~~ in the license year following the commission meeting that the special permit was awarded~~[, except that during 2020 permits for deer and waterfowl shall also be awarded for the current license year].~~

(2) A special commission permit holder shall comply with all other department statutes and KAR Title 301.

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or ~~[nonmobility-impaired] quota hunt pursuant to 301 KAR 2:178, for which they are otherwise eligible to participate, except:~~

(a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may, subject to the timely submission of all applicable information by the wildlife conservation organization, hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' hunting units during one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) Each special commission permit to hunt elk shall be randomly assigned an elk~~[a]~~ hunting unit at the time of the selection of the wildlife conservation organizations to be awarded special commission permits. Each elk hunting unit will be assigned once prior to assigning a second permit to the unit. No elk hunting unit will be assigned more than two (2) permits. The permit holder shall be allowed~~[restricted]~~ to hunt in the assigned elk hunting unit on private land with permission from the landowner, or on Department owned or managed lands that are the subject of public access agreements between the landowners and the department~~[hunting in the assigned unit only]~~. The permit holder shall also be allowed to hunt in any other elk hunting unit with private landowner permission, as established in Section 3(7) of this regulation and consistent with any applicable requirements established in 301 KAR 2:132 and 301 KAR

2:030, on private land that is not open for public hunting through a hunter access area agreement, voucher-cooperator agreement, or wildlife management area agreement between the landowner and the department.

~~[(7) A holder of any special commission permit may hunt on private land with the permission of the landowner.]~~

Section 4. Incorporation by Reference.

~~(1) "Special Commission Permits Application Form", 2019 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2024, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for the application, award, and reporting of the Special Commission Permit fund raising opportunity for incorporated nonprofit wildlife conservation organizations.

(b) The necessity of this administrative regulation: The regulation is necessary to establish the procedures of the Special Commission Permit program required by KRS 150.177.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.177 requires administrative regulations to be promulgated to govern the number of special permits to be issued per year per species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the administration of the statutes by establishing clear procedures for the application, granting, reporting, and use of special commission 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: This amendment adds Black Bear as a species for which permits will be eligible, clarifies the benefit of the receiving a waterfowl permit, moves the application and reporting process to an online submission portal, and removes language that is no longer needed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional fundraising opportunities through black bear permits, to clarify ambiguous language regarding the benefits of possessing a special waterfowl permit, and streamlines the application and reporting process via an online system that will provide various error controls to assist organizations in properly completing the applications and

reports.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the number and type of species which are eligible for special permits.

(d) How the amendment will assist in the effective administration of the statutes: The online portal will help to avoid errors in the application and reporting process to decrease the number of organizations that must be disqualified for errors in the application and reporting processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All incorporated non-profit wildlife conservation organizations that apply for special commission permits (approximately 10-20 per year), all such organizations that have been awarded permits that are required to report upon the use of the funds raised (approximately 10-14 per year), all individuals that receive the special permits each year through the non-profit fundraising efforts (approximately 35-40 per year historically and 45-50 per year moving forward with the addition of black bear 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 non-profits will have to submit their application materials, hunter info, and reporting documents via a web-based online portal rather than via email or hard copy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost to the entities to comply with the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit from real-time error alerts for incomplete or missing application materials, hunter information, and reporting materials as well as save the costs associated with physical mail delivery for those organizations that have historically mailed their documents.

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

(a) Initially: There will be no added costs to implement the amendments.

(b) On a continuing basis: There will be no added 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 Fish and Game Fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all organizations will qualify or not qualify to participate based upon set criteria in accordance with the statute.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.177, 150.195(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? There will be no revenue generated for state or local government 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 revenue generated for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer the program amendments in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer the program amendments in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not result in cost savings for the regulated entities, but will provide opportunities for the regulated entities to generate funds through the addition of black bear permits. The retail value of the black bear permits is currently unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not result in cost savings for the regulated entities, but will provide opportunities for the regulated entities to generate funds through the addition of black bear permits. The retail value of the black bear permits is currently unknown.

(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 (+/-):

Expenditures (+/-):

Other Explanation:

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 4:070. Jockeys and apprentices.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.260 (10), 230.260 (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260(10) authorizes the commission to promulgate administrative regulations establishing minimum fees for jockeys in the absence of a contract between an employing owner or trainer

and a jockey. KRS 230.260(14) authorizes the commission to promulgate administrative regulations to establish safety standards and minimum fees for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated the ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 3:020, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his or her legal name, which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, or the welfare of the betting public, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey.

(1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his or her own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance in Thoroughbred Racing.

(1) The provisions of this section apply only to thoroughbred racing.

(2) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he or she has ridden five (5) winners;

(b) Seven (7) pounds until he or she has ridden an additional thirty-five (35) winners;

(c) If he or she has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he or she shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount, whichever occurs first.

(3)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his or her original contract employer if his or her contract has not been transferred or sold since his or her first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(4) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;
2. Filed with the commission; and
3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(5) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity that approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(6) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts.

(1) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer of the contract, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(2) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards determine that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race when the contract is executed;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A contract rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his or her contract employer;

(2) Ride or agree to ride any horse in a race without consent of his or her contract employer;

(3) Share any money earned from riding with his or her contract employer; or

(4) Accept any present, money, or reward of any kind in connection with his or her riding of any race except through his or her contract employer.

Section 7. Calls and Engagements.

(1) Any rider not prohibited by contract may agree to give first or second call on his or her race-riding services to any licensed owner or trainer.

(2) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable that employs him or her.

Section 8. Jockey Fees in Thoroughbred Racing.

(1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a)

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$99,999	10%	>5% or \$140, whichever is greater	>5% or \$135, whichever is greater	>5% or \$130, whichever is greater	\$125
\$100,000 - \$999,999	10%	5%	5%	5%	\$125
\$1,000,000 and up	10%	5%	5%	5%	\$500
[Up to \$9,999	10% of Win Purse	5% of Place Purse OR \$75, whichever is greater	\$70	\$65	\$60
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	\$75	\$70	\$65
\$15,000-\$24,999	10% of Win Purse	5% of Place Purse	5% of Show Purse OR \$80, whichever is greater	\$75	\$70
\$25,000-49,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$85	\$80
\$50,000-\$99,000	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$90	\$85
\$100,000 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$110]

(b) The flat fee amounts as established in paragraph (a) of this subsection are not percentage driven.

(2) A jockey fee shall be considered earned by a rider if he or she is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he or she has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Jockey Fees for Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing.

(1) The fee to a jockey in all races shall be, in the absence of special agreement, as follows:

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$6,499	10% of Win Purse	Losing mt + \$15	Losing mt + \$10	Losing mt + \$5	\$75
\$6,500-\$9,999	10% of Win Purse	Losing mt + \$15	Losing mt + \$10	Losing mt + \$5	\$80
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	Losing mt + \$10	Losing mt + \$5	\$85

\$15,000-24,999	10% of Win Purse	5% of Place Purse	5% or (LM + \$10) whichever is greater	Losing mt + \$5	\$90
\$25,000-\$49,999	10% of Win Purse	5% of Place Purse	5% or (LM + \$10)	Losing mt + \$5	\$95
\$50,000-\$99,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	Losing mt + \$5	100
\$100,000 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$125

(2) A jockey fee shall be considered earned by a rider when he or she is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he or she has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for such race;

(b) If a such rider capable of riding elects to take himself or herself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a such rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 10. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after a race has been declared official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be paid a losing mount fee.

Section 11. Duty to Fulfill Engagements. Every rider shall fulfill his or her duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he or she believes to be unsound, nor over a racing strip he or she believes to be unsafe. If the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 12. Presence in Jockey Room.

(1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race he or she is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride. Upon arrival each rider shall report his or her engagements to the clerk of scales. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he or she is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he or she has fulfilled all riding engagements for the day, except to ride in a race, or to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he or she is riding, a racing official, or a media representative authorized by the stewards, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room and for excluding all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, media representatives authorized by the stewards, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting

prior to its conclusion shall notify the stewards of his or her intent to depart after fulfilling his or her final riding engagement of the day.

Section 13. Weighing Out.

(1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he or she is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)

(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he or she is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Riding crops, blinkers, number cloths, bridles, bits, reins, over-girth, breast collar, goggles, safety helmets, and safety vests shall not be included in a rider's weight.

Section 14. Wagering.

(1) A rider shall not:

(a) Place a wager;

(b) Cause a wager to be placed on his behalf; or

(c) Accept any ticket or winnings from a wager on any race except on his or her own mount, and except through the owner or trainer of the horse he or she is riding.

(2) The owner or trainer placing wagers for his or her rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 15. Attire.

(1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey attire with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he or she is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet the standards established in subsections (4) and (5) of this section; and

(f) A number on his or her right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(4) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her helmet has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) ASTM International Standard, ASTM F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 16. Advertising.

(1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after a race, unless:

(a)

1. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

3. The picture or logo has previously been approved by the current owner, association, and the stewards under the process established in this administrative regulation, and this approval is reflected in the commission's official records;

(b) The material complies with the size restrictions of subsection (2)(b) of this section;

(c) The material meets the advertising standards established in subsection (2) of this section;

(d) Written approval by the following is submitted to the commission:

1. The managing owner of the horse, or authorized agent of the managing owner;

2. The jockey riding the horse or the authorized agent of the jockey;

3. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

4. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section; and

(e) Written approval required pursuant to subsection (1)(d) of this section is evidenced by completion and return to the commission of the Request to Wear Advertising and Promotional Materials, form KHRC-4-070-1. The form shall be completed and submitted to the stewards not later than 5 p.m. at least two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. Other forms of approval shall not be accepted by the commission.

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions:

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity could be considered as obscene or indecent to a reasonable person.

(4) Any party who fails to comply with this or any other provision established in this administrative regulation shall be subject to penalties by the commission in accordance with KRS Chapter 230 and KAR Title 810.

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine compliance with this section.

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in accordance with this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to

apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or administrative regulation, if the internal rules have been previously filed with and approved by the commission or its authorized representative.

Section 17. Race Replay.

(1) Every rider shall check the race replay list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the race replay film list shall be considered as notice to all riders whose names are listed to present themselves when designated by the stewards to view the race replay.

(3) Any rider may be accompanied by a representative of the jockey organization of which he or she is a member in viewing the race replay or, with the stewards' permission, be represented at the viewing by his or her designated representative.

Section 18. Material Incorporated by Reference.

(1) "Request to Wear Advertising and Promotional Material", KHRC 4-070-1, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 15, 2023 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 22, 2024 at 4047 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4047 Iron Works Parkway, Lexington, Kentucky 40511, phone +1, (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the requirements and responsibilities imposed upon jockeys and apprentice jockeys who participate in racing in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the rules and requirements to participate as a jockey or apprentice jockey in horse racing in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.260(10) requires the Commission to promulgate administrative regulations establishing minimum fees for jockeys in absence of a contract. KRS 230.210(14) requires the Commission to promulgate administrative regulations that establish safety standards for jockeys.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by setting forth jockey and apprentice requirements that ensure and enhance the safety and integrity of racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will modernize the jockey fees established in Section 8. Jockey Fees in Thoroughbred Racing. The proposed amendment is approved by the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders ("KTA/KTOB"), as well as the Kentucky Horsemen's Benevolent and Protective Association ("KHBPA") and the Jockeys' Guild.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update jockey fees in our regulation to establish parity with jockey and apprentice fees in other states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260(10) requires the Commission to promulgate administrative regulations establishing minimum fees for jockeys in absence of a contract.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.260(10) requires the Commission to promulgate administrative regulations establishing minimum fees for jockeys in absence of a contract.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KHRC, owners, jockeys, and apprentices are affected by this regulation. Owners will have the flexibility to negotiate different rates with jockeys and apprentices if preferred. In 2023, the KHRC had 5,278 owner licenses, 174 jockey licenses, and 17 jockey apprentice licenses. This figure remains consistent from year to year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Horse owners will be required to pay jockeys and apprentice jockeys in accordance with this regulation or negotiate a different fee schedule with the jockey or apprentice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the owner and the jockey/apprentice do not negotiate a different amount, then jockeys will be paid as follows for races in which the purses are up to \$99,999: 10% for the winning mount; greater than 5% or \$140, whichever is greater for the second place mount; greater than 5% or \$135, whichever is greater for the third place mount; greater than 5% or \$130, whichever is greater for the fourth place mount; and \$125 for a losing mount. Jockeys will be paid as follows for races in which the purses are between \$100,000 and \$999,999: 10% for the winning mount; 5% for the second, third, and fourth place mounts; and \$125 for a losing mount. Jockeys will be paid as follows for races in which the purses are \$1 million and up: 10% for the winning mount; 5% for the second, third, and fourth place mounts; and \$500 for a losing mount.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jockeys and apprentices in Kentucky will be paid commensurately with jockeys and apprentices in other states. This will allow Kentucky to remain a competitive state for jockeys and attract the best jockeys.

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

(a) Initially: There is no initial cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs incident to the issuance of licenses will be funded through the Commission's budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment increases fees between stakeholders, as it requires owners to pay jockeys and apprentices according to a different compensation model.

(9) TIERING: Is tiering applied? Tiering is not applied because the amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260(8), 230.260(10), and 230.260(14).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation may generate additional revenue for state government for its first year, as a result of more jockey and apprentice licenses being issued, due to Kentucky working to stay competitive with other states. This regulation will not generate additional revenue for local governments during its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation may generate additional revenue for state government for subsequent years, as a result of more jockey and apprentice licenses being issued, due to Kentucky working to stay competitive with other states. This regulation will not generate additional revenue for local governments during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Some revenue may be generated for state government, as a result of more licenses being issued.

Expenditures (+/-): Neutral

Other Explanation: None

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

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

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

(c) How much will it cost the regulated entities for the first year? This regulation may cost horse owners a nominal sum during the first year, but that cost will be offset by the wage gains for jockeys and apprentices.

(d) How much will it cost the regulated entities for subsequent years? This regulation may cost horse owners a nominal sum during subsequent years, but that cost will be offset by the wage gains for

jockeys and apprentices.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: N/A

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Data Analytics
(Amendment)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920, 216.2925, 216.2927, 304.14-135

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions.

(1) "Ambulatory facility" is defined by KRS 216.2920(1).

(2) "Cabinet" is defined by KRS 216.2920(2).

(3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document created and updated by a contracted vendor selected by the Cabinet that shall contain[containing] the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4) "Hospital" is defined by KRS 216.2920(6).

(5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for hospice care.

(6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(7) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(9) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient

and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals.

(1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, for every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form the outpatient services it provides and shall for every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities.

(1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;
2. Childbirth;
3. Urgent treatment of minor illness or injury;
4. Emergency;
5. Mammography;
6. X-ray;
7. Ultrasound;
8. Computed tomography;
9. Magnetic resonance imaging;
10. Cardiac catheterization;
11. Positron emission tomography; and
12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(c) An ambulatory facility shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers.

(1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data log and a verification notice.

Section 6. Data Submission Timetable for Providers.

(1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that during that quarter became final as specified in Section 5(1) of this administrative regulation; and
(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers.

(1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a

result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) If editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) If editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers.

(1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of [Health] Data[and] Analytics, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of [Health] Data[and] Analytics on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers.

(1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, the provider shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers.

(1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. A hospital shall ensure that each record submitted to the cabinet contains the data elements identified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

Section 13. Required Data Elements for Ambulatory Facilities. An ambulatory facility shall ensure that each record submitted to the cabinet contains the data elements identified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

Section 14. Required Elements for Manuals. "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" shall be created and updated by a contracted vendor selected by the cabinet. Any changes or revisions by the vendor shall require written cabinet approval prior to implementation. The manual shall be found on the office's website at: <https://www.chfs.ky.gov/agencies/ohda/Pages/hfsd.aspx>. [Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ~~"Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised January 1, 2019; and~~

(b) ~~"Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised January 1, 2019.~~

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JILNAR MASRI, Executive Director
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 13, 2023

FILED WITH LRC: November 15, 2023 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

(b) The necessity of this administrative regulation: This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance required by KRS 216.2925 and KRS 216.2923(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

(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 update the name of the entity responsible for releasing these data sets to reflect the 2022 CHFS re-organization which changed the Office of Health Data and Analytics (OHDA) to the Office of Data Analytics. The regulation is also being updated to remove the incorporation by reference to the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and Kentucky Data Coordinator's Manual for Ambulatory Facilities. These manuals are revised and updated by a vendor on behalf of the cabinet.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to avoid confusion regarding the CHFS Office of Data Analytics which oversees this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment does not alter the existing process. The amendment updates names and existing practices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the administrative regulation to reflect Office of Data Analytics new name and bring the public data use agreement form into alignment with other data use agreements utilized by the Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: N/A

(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 individuals, businesses, and organizations will have the current name for the agency listed on this regulation and by removing the incorporation to the manuals the speed with which they can be updated will increase.

(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 is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Confusion will be avoided regarding the name of the office responsible for releasing this data and additional safeguards surrounding the data will be put into place.

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

(a) Initially: Initial costs are estimated to be under \$1,000 and include existing staff time and updating this regulation on the Office of Data Analytics Web site.

(b) On a continuing basis: Office of Data Analytics will need to review and link to updated Data Coordinator's Manuals prepared by a contracted vendor on the agency's behalf.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Office of Data Analytics funds will continue to be used.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the regulation is applied equally to all regulated entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Office of Data and Analytics (ODA) is required to implement 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 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

(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 expenditures of ODA is less than \$500 per month for this 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? The amendment to this administrative regulation will not create new revenue.

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

(c) How much will it cost to administer this program for the first year? Approximately \$6,000 in existing staff time and resources.

(d) How much will it cost to administer this program for subsequent years? Approximately \$6,000 in existing staff time and resources.

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

Revenues (+/-): N/A

Expenditures (+/-): Less than \$500 per month.

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 savings will be generated by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings are anticipated from this amendment.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There are no ongoing costs to affected 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)] No major economic impact is anticipated.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Data Analytics

(Amendment)

900 KAR 7:040. Release of public data sets for health facility and services[care discharge] data.

RELATES TO: KRS 61.870-61.884, 216.2920, 216.2927, 216.2929

STATUTORY AUTHORITY: KRS 194A.050(1), 216.2923(2)(b) NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923(2)(b) requires the Cabinet for Health and Family Services to promulgate administrative regulations for its transactions related to KRS 216.2920 to 216.2929. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 216.2920(2).

(2) "Data" means the information collected pursuant to 900 KAR 7:030.

(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service, ambulatory surgery, emergency department, or observation stay billing record contained in a data file.

(4) "Health care provider" is defined by KRS 216.2920(5).

(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.

VOLUME 50, NUMBER 6— DECEMBER 1, 2023

(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. Encounter-level data shall be released in an electronic text file and shall include the following data elements:

Encounter-Level Data
Provider ID
Quarter and Year of Discharge
Patient Gender
Patient Age Group
Patient Race or Ethnicity
Patient Resident County
Type of Admission
Source of Admission
All Diagnoses Available for Each Individual Record
All Procedures Available for Each Individual Record
Patient Zip Code
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data. (1) The cabinet shall not release data if KRS 216.2927 prohibits its release.

(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:

(a) Diagnoses and procedures, primary, and any other level;
(b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;
(c) Patient gender;
(d) Age or age grouping;
(e) Discharge status;
(f) Payor category, all levels;
(g) Charge information, total and ancillary;
(h) County of patient residence;
(i) County of provider;
(j) Ancillary department information;
(k) Length of stay, total, and average;
(l) External cause of injury;
(m) Race or ethnicity; or
(n) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.

(3) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030.

Section 4. Release of Data.

(1) A person or agency shall, as a condition for receiving data from the cabinet, sign an Agreement for Use of Kentucky Health Facility and Services[Claims] Data. A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:

(a) A report or summary of data that contains a record value of one (1) through ten (10)[consists of five (5) or fewer records] shall not be released or made public if the cell's original size can be determined by subtraction from the total.

(b) If the circumstances described in subsection (a) occurs then:
1. totals shall also be removed from the table, or
2. the exact number of the next smallest cell shall be withheld;

(c)[(b)] A person or agency receiving data shall not redistribute or sell data in the original format;

(d)[(e)] A person or agency receiving data shall not redistribute

or sell a subset of the data or an aggregate product of the data;

(e)[(d)] Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;

(f)[(e)] The data collected pursuant to 900 KAR 7:030 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and

(g)[(f)] A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees.

(1) The cabinet shall charge a fee not to exceed \$1,500 for the purchase of a single copy of an annual, public-use data set.

(2) A public-use data set shall be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference.

(1) "Agreement for Use of Kentucky Health Facility and Services [Claims] Data", May 2023[2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Data Analytics[Health Policy], 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JILNAR MASRI, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024 at 9 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 12, 2024, 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 January 31, 2024. 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 Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; 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 guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information. This is in accordance with KRS 216.2923(2)(b).

(b) The necessity of this administrative regulation: KRS 216.2923(2)(b) requires there to be an administrative regulation for the purposes of carrying out the provisions of KRS 216.2920 to 216.2929 regarding the release and distribution of public data sets for health care discharge data collected by the cabinet. This administrative regulation provides the format, restrictions, and requirements for the release of these data sets.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216.2923(2)(b) requires the office to promulgate administrative regulations necessary to carry out the provisions of KRS 216.2920 to 216.2929. This administrative regulation provides the format, restrictions, and requirements for the release of these data sets.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides format, restrictions, and requirements for the release of public data sets for health care discharge from the office.

(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 update the name of the entity responsible for releasing these data sets to reflect the 2022 CHFS reorganization which changed the Office of Health Data and Analytics (OHDA) to the Office of Data Analytics (ODA). This amendment also provides updated editions of the data use agreement form for this data and updates language regarding cell suppression.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to avoid confusion regarding the CHFS Office which oversees the release of these data sets and to include update data use agreement form language.

(c) How the amendment conforms to the content of the authorizing statutes: 216.2923(2)(b) requires the office to promulgate administrative regulations necessary to carry out the provisions of KRS 216.2920 to 216.2929. This amendment does not alter the existing process. The amendment updates names and existing forms.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the administrative regulation to reflect ODA's new name and bring the public data use agreement form into alignment with other data use agreements utilized by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, or organizations who wish to receive public data sets for health care discharge data.

(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 individuals, businesses, organizations will need to use the updated form when submitting their requests for data to the office.

(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 is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Confusion will be avoided regarding the name of the office responsible for releasing this data and additional safeguards surrounding the data will be put into place.

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

(a) Initially: Initial costs are estimated to be under \$1,000 and include existing staff time and the updating the public data use agreement form, and uploading the form to a page on the ODA Web site.

(b) On a continuing basis: ODA will need to maintain and check the e-mail box for these data requests. Staff will fulfill valid requests for this data. Existing state staff is already handling these tasks, which take approximately thirty (30) hours or less per month. Total estimated cost should be less than \$1000 per month.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: ODA funds will continue to be used.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This revision to the administrative regulation does not establish or change any fees. The previously approved charge of a fee not to exceed \$1,500 for the purchase of a single copy of an annual, public-use data set remains in place.

(9) TIERING: Is tiering applied? Yes, tiering is applied because the fee for non-profits is \$500 while it is \$1,500 for all others.

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, Office of Data and Analytics (ODA) is required to implement this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required and authorized by KRS 216.2920 to 216.2929.

(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. Based on this administrative regulation amendment there will be no additional cost.

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

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

(c) How much will it cost to administer this program for the first year? Approximately \$6,000 in existing staff time and resources.

(d) How much will it cost to administer this program for subsequent years? Approximately \$6,000 in existing staff time and resources.

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 savings will be generated by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings are anticipated from this amendment.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There are no ongoing costs to affected 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)]. No major economic impact is anticipated.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:048. Operation and services; nursing homes.

RELATES TO: KRS 194A.700(1), 194A.705(2)(c), 209.030, 209.032, 216.510-216.525, 216.532, 216.537, 216.540, 216.789, 216.793, 216A.080, 310.021, 310.031, 315.035, 333.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[216B.010-216B.130, 216B.990]

STATUTORY AUTHORITY: KRS 216B.042[, 216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services[and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services]. This administrative regulation establishes minimum licensure requirements for the operation of and services provided by[existing] nursing homes.[This administrative regulation does not address the establishment of new nursing homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1)[means activities of self-help (e.g., being able to feed, bathe and dress oneself), communication (e.g., being able to place phone calls, write letters and understand instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities)].

(2) "Administrator" means a person who has a license to practice long-term care administration[is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(4) "Licensed dietician" means a health care professional who is licensed pursuant to KRS 310.021.

(5) "Nursing home" means an establishment located in a permanent building that has resident beds and provides:

(a) Medical services; and

(b) Continuous nursing services["Facility" means a nursing home facility.

(4) "License" means an authorization issued by the cabinet for the purpose of operating a nursing home and offering nursing home services].

(6)[(5)] "PRN medications" means medications administered as needed.

[(6) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.]

(7) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a [patient or the movement of a] portion of a patient's body.

Section 2. [Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient

care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 3.] Administration and Operation.

(1) Licensee. The licensee shall:

(a) Be legally responsible for:

1. The operation of the facility; and[for]

2. Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility; and

(b) Contract for professional and supportive services not available in the facility as dictated by the needs of each resident.

(2) Administrator.

[(a)] All facilities shall have an administrator who shall:

(a) Be[who is] responsible for the day-to-day operation of the facility; and

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's [who shall delegate such responsibility in his] absence.

[(b)] The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.]

(3) Administrative records.

(a) The facility shall maintain a resident registry that documents the:

1. Name of each resident;

2. [bound, permanent, chronological patient registry showing] Date of admission; and

3. [; name of patient, and] Date of discharge.

(b) The facility shall [require and] maintain a record of written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records[shall be maintained].

(d) 1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident, [patient (including a medication error[errors] or drug reaction];

b. [reactions]; Visitor; or

c. Staff member.

2. The report shall:

a. Identify[be made and signed by the administrator or nursing service supervisor, and] any staff member who witnessed the incident; and[;]

b. [The report shall] Be filed in an incident file.

(4) Policies. The facility shall have[establish] written policies and procedures that govern all services provided by the facility. The [written] policies shall include:

(a) Address resident[patient] care and services, including[to include] physician, nursing, pharmaceutical[(including medication step orders policy)], and residential services;[;]

(b) Require[Adult and child protection. The facility shall have written policies which assure] the reporting of cases of abuse, neglect, or exploitation of adults [and children] pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in progress;[Chapters 209 and 620.]

(c) Prohibit the use of chemical and physical restraints, except as authorized by KRS 216.515(6); and[Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.]

(d) [Missing patient procedures. The facility shall a written procedure to] Specify in a step-by-step manner the actions [that] which shall be taken by staff if[when] a resident[patient] is [determined to be] lost, unaccounted for, or on other unauthorized absence.

(5) Resident[Patient] rights. Resident[Patient] rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) A resident in a nursing home shall:

1. [Patients shall] Be admitted only upon the referral of a

physician[.];

2. ~~[Additionally, the facility shall admit only persons who] Have a variety of medical condition that requires conditions and require~~

a. Medical services[.];

b. Continuous nursing medical services[.]; and

c. Residential inpatient care, but ~~[do] not [currently require] inpatient hospital services; and[.]~~

3. ~~Not have The facility shall not admit persons whose care needs that exceed the capability of the facility.~~

(b) 1. Upon admission, the facility shall obtain the:

a. Resident's patient's medical diagnosis;

b. Physician's orders for the care of the resident patient and the

c. Transfer form.

2. Within forty-eight (48) hours after admission, the facility shall obtain a medical evaluation from the resident's patient's physician including:

a. Current medical findings[.];

b. Medical history; and

c. Physical examination.

3. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) ~~Upon Before~~ admission, the facility shall provide the resident patient and a responsible member of the resident's his family or other designated representative with written information regarding the facility's policies. ~~[committee shall be informed in writing of the established policies of the facility] including:~~

1. Services offered and charges: fees, reimbursement[.];

2. Visitation rights during serious illness[.];

3. Visiting hours; and[.]

4. Type of diets offered and services rendered[.]

(d) The facility shall ~~[provide and] maintain~~ a system for:

1. Identifying each resident's patient's personal property; and

2. ~~[facilities for] Safekeeping [of his declared] valuables, including assurance that each resident's. Each patient's clothing and other property is shall be reserved for the resident's his own use.~~

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for residents who are:

(a) ~~[patients being] Transferred to another health care facility; or~~

(b) ~~[being] Discharged to the home.~~

(8) Transfer and discharge.

(a) The facility shall:

1. Comply with the requirements of 900 KAR 2:050 upon when transferring or discharging a resident; and residents[.]

2. (a) The facility shall Have written transfer procedures and agreements for the transfer of a resident patients to a higher intensity level of care, if indicated other health care facilities which can provide a level of inpatient care not provided by the facility[.]

(b) A Any facility that which does not have a transfer agreement in effect, but has attempted in which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the requirements of paragraph (a) 2. of this subsection licensure requirement[.]

(c) The transfer procedures and agreements shall:

1. Specify the responsibilities each party institution assumes in the transfer of residents patients and

2. Establish responsibility for notifying the other party institution promptly of an the impending transfer; and of a patient and

3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. (b) Initiate a transfer through the resident's physician if the resident's When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders except in cases of emergency, shall be transferred promptly to a hospital or a skilled nursing facility[.] or

2. Contract for services shall be contracted for from another community resource to meet a resident's needs.

(e) (e) If a resident's condition improves and the resident may

be served When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for the resident patients to be transferred to a lower intensity level of care facilities providing appropriate services[.]

(f) (d) Except in an emergency, the resident, resident's responsible family member, patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient[.]

(g) (e) If a resident transfers When a transfer is to another level of care within the same facility, the complete medical record or a current summary of the resident's medical record shall accompany the resident thereof shall be transferred with the patient[.]

(h) (f) If the resident patient is transferred to another health care facility or home to receive be cared for by a home health services agency, a transfer form shall:

1. Accompany the resident; and patient. The transfer form shall

2. Include the following at least:

a. Physician's orders (if available)[.];

b. Current information regarding the resident's relative to diagnosis with a history of any health conditions that require problems requiring special care[.];

c. A summary of the course of prior treatment, special supplies, or equipment needed for the resident's patient care[.]; and

d. Pertinent social information on the resident patient and resident's his family.

(9) Tuberculosis testing.

(a) All employees of a nursing home and patients shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205.

(b) Residents of a nursing home shall be screened and tested in accordance with 902 KAR 20:200. Tuberculosis testing in long term care facilities[.]

(10) Personnel.

(a) In accordance with KRS 216.532, a nursing home shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a nursing home shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) A nursing home shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) A nursing home may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A Job descriptions written job description descriptions shall be developed for each category of personnel, including to include

1. Qualifications[.];

2. Lines of authority; and

3. Specific duty assignments.

(f) (b) Employee records Current employee records shall be maintained on each staff member and contain:

1. Name and address;

2. Verification of shall include a resume of each employee's training and experience, including evidence of current licensure, registration, or certification, if applicable;

3. Employee where required by law, health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection records of in-service training and ongoing education, and the employee's name, address and Social Security number[.]

(g) (e) Staffing requirements.

1. Staffing in the facility shall be sufficient in number and qualifications have adequate personnel to meet the personal care, nursing care, supervision, and other needs of each resident the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care,

supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.]

2. [When the staff to patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on-site[on duty] and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire, or other emergencies.

3.4. The use of volunteers shall not be included in the[counted to make up] minimum staffing requirements of this paragraph.

(h)[5.] The facility shall have a director of nursing [service] who;

1. Is a registered nurse and [who] works full time during the day;[.] and [who]

2. Devotes full time to the nursing services[service] of the facility.

(i) If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing to ensure[; so] that there is[shall be] the equivalent of a full-time director of nursing[service].

(j) The director of nursing shall:

1. Be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric, or geriatric nursing;[.]

2. Be [The director of the nursing service shall be] responsible for[;

a.] developing and maintaining;

a. Nursing service objectives;[.]

b. Standards of nursing practice;[.]

c. Nursing procedure manuals;[.] and

d. Written job descriptions for each level of nursing personnel;[.]

3. [b.] Recommend[recommending] to the administrator the number and levels of nursing personnel to be employed;

4. Participate in staff[, participating in their] recruitment and selection or recommend[and recommending] termination, if [of employment when] necessary;[.]

5. [c.] Assign and supervise[Assigning and supervising] all levels of nursing personnel;[.]

6. [d.] Participate[Participating] in planning and budgeting for nursing care;[.]

7. [e.] Participate[Participating] in the development and implementation of resident[patient] care policies;[.]

8. [f.] Coordinate[Coordinating] nursing services with other resident[patient] care services;[.]

9. [g.] Plan and conduct[Planning and conducting] orientation programs for new nursing personnel and annual[continuing] in-service education for all nursing personnel;[.]

10. [h.] Participate[Participating] in the screening of prospective residents[patients] in terms of required nursing services;

11. Assure[and nursing skills available.

i. Assuring] that a written monthly assessment of the resident[s] [patient's] general condition is completed;[.]

12. [j.] Assure[assuring] that a nursing care plan is;[shall be]

a. Established for each resident[patient] and [shall be that his plan shall be]

b. Reviewed and modified as necessary;[.]

13. [k.] Assure that all nurses and unlicensed staff [Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies] are assigned duties consistent with their training and experience; and[.]

14. [l.] Assure[Assuring] that a monthly review of each resident[s] [patient's] medications is completed and notify[notifying] the resident's physician if [when] changes are appropriate.

(k)[6.] Supervising nurse.

1. The facility shall have a full-time registered nurse who provides or supervises nursing care [shall be provided by or under the direction of a full-time registered nurse].

2. The supervising nurse;

a. May be the director of nursing or the assistant director of nursing;

b. [and] Shall be trained or experienced in the areas of;

(i) Nursing administration and supervision;[.]

(ii) Rehabilitative nursing;[.]

(iii) Psychiatric nursing; or

(iv) Geriatric nursing;[.]

c. [The supervising nurse] Shall make daily rounds to all nursing units that perform [performing such] functions that include;[as]

(i) Visiting each resident[patient]; and

(ii) Reviewing medical records, medication cards, patient care plans, and staff assignments;[.] and

d. If [when] possible, shall accompany the physician during visits with residents [accompanying physicians when visiting patients].

(j)[7.] Charge nurse.

1. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who shall be [is] responsible for the nursing care of residents [patients during her tour of duty].

2. If [When] a licensed practical nurse is on duty, a registered nurse shall be on call.

(m)[8.] Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(n)[9.] Therapists.

1. [a.] If the facility provides rehabilitative services beyond rehabilitative nursing care [are offered, whether] directly or through contract, the [cooperative arrangements with agencies that offer therapeutic services, these] services shall be provided or supervised by qualified therapists that [to] include, depending on the service, licensed;

a. Physical therapists;

b. Speech-language [speech] pathologists; or [and]

c. Occupational therapists.

2. [b.] If [When] supervision is less than full time, it shall be;

a. Provided on a planned basis; and [shall be]

b. Frequent enough, in relation to the [staff] therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

3. [c.] In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all of a resident's [the] needs [of the patient,] and if [where] all rehabilitative [therapists'] services are administered under the direct supervision of a physician qualified in physical medicine who determines [will determine] the goals and limits of the therapists' work;[.] and prescribes modalities and frequency of therapy, persons with qualifications other than licensed therapists [those described in subsection (9)(c)9a of this section] may be assigned duties appropriate to their training and experience.

(o)[40.] Dietary. Each facility shall have a full-time staff person designated by the administrator who shall be;[.]

1. Responsible for the total food service operation of the facility; and

2. On duty a minimum of thirty-five (35) hours each week.

(p)[44.] Each facility shall designate one (1) or more staff [a person for the following areas] who shall [will] be responsible for:

1. [a.] Maintaining medical records;

2. [b.] Arranging for social services; and

3. [c.] Developing and implementing the activities program and therapeutic recreation.

(q)[42.] The facility shall ensure that supportive personnel, consultants, assistants, and volunteers are [shall be] supervised and [shall] function within the policies and procedures of the facility.

(r)[44.] An employee who contracts a communicable or [Health requirements. No employee contracting an] infectious disease shall;

1. Be immediately excluded from [appear at] work; and

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice [until the infectious disease can no longer be transmitted].

(s) In-service training.

1. Each facility employee shall receive orientation and annual in-service training that corresponds with the staff member's job duties.

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include:

a. Policies regarding the responsibilities of specific job duties;

b. Services provided by the facility;

c. [e] Orientation program. The facility shall conduct an

orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and Emergency and disaster procedures;

d. Procedures for the reporting of cases of adult abuse, neglect, or exploitation pursuant to KRS 209.030;

e. Residents rights established by KRS 216.510 to 216.525; and

f. ~~(f)~~ Other in-service training.

1. All employees shall receive in-service training and ongoing education that correspond with the duties of the staff person's respective job.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility administrator or staff member in charge of medical records shall assure that a complete medical record is kept for each resident with all entries current, dated, and signed.

(b) [shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed.] Each record shall include:

1. Identification information [data] including:

a. Resident's [The patient's] name;

b. Address;

c. Social Security, Medicare, and Medical Assistance identification number, if appropriate; [if available];

d. Name, address, and telephone number of the referral agency;

e. Name and telephone number of the resident's [personal] physician or health care practitioner;

f. Name, address, and telephone number of the resident's responsible family member, guardian, [next of kin] or other responsible person; and

g. Date of admission;

2. Admitting medical evaluation as required by subsection (6)(b) of this section; [by a physician including current medical findings; medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)]

3. Dated and signed orders for medication, diet, or [and] therapeutic services;

4. Physician's progress notes indicating any [describing significant] changes in the resident's [patient's] condition, documented [written] at the time of each visit;

5. Findings and recommendations of consultants;

6. A medication sheet that includes [which contains] the date, time given, name of each medication dosage, name of the prescribing physician or practitioner as authorized by the scope of practice, [advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant,] and name of nurse or certified medication aide [person] who administered the medication;

7. Nurse's notes indicating any changes in the resident's [patient's] condition, including:

a. A [actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of] response to medications or [response to] treatments;

b. Mode and frequency of PRN medications administered;

c. Condition necessitating administration of PRN medication;

d. Reaction following PRN medication;

e. Visits from the [by] physician and phone calls to the physician;

f. Medically prescribed diets; and

g. Preventive maintenance or rehabilitative nursing measures;

8. Written assessment of the resident's [patient's] monthly general condition;

9. Documentation [Reports] of dental, laboratory, and x-ray services (if applicable);

10. Changes in the resident's [patient's] response to the activity and therapeutic recreation program; and

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(12)(b) Retention of records. After death or discharge, the completed medical record shall be placed in an inactive file and retained for at least six (6) years. [patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.]

(13) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

Section 3. [Section 4.] Provision of Services.

(1) Physician services.

(a) The health care of each resident [every patient] shall be under the supervision of a physician who, based on an evaluation of the resident's [patient's] immediate and long-term needs, prescribes a planned regimen of medical care that [which] covers:

1. Indicated medications;

2. Treatments;

3. Rehabilitative services;

4. Diet;

5. Special procedures recommended for the health and safety of the resident; [patient;]

6. Activities;

7. Plans for continuing care; and

8. Discharge.

(b) 1. Each resident [Patients] shall be evaluated by a physician at least one (1) time [once] every thirty (30) days for the first sixty (60) days following admission.

2. After [Subsequent to] the 60th day following admission, the physician shall evaluate the resident [patients shall be evaluated by a physician] every sixty (60) days unless justified and documented by the attending physician in the resident's [patient's] medical record.

3. There shall be evidence in the resident's [patient's] medical record of the physician's [physician] visits [to the patient] at appropriate intervals.

(c) There shall be evidence in the resident's [patient's] medical record that the [patient's] attending physician has made arrangements [arrangement] for the medical care of the resident [patient] in the physician's absence.

(d) 1. [Availability of physicians for emergency care.] The facility shall have an arrangement [arrangements] with one (1) or more physicians who shall [will] be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the resident [patient] is not immediately available.

2. A schedule listing the names and telephone numbers of [these] physicians and the specific days each is [shall be] on call shall be posted in each nursing station.

3. There shall be established procedures for [to be followed in an] emergency situations that [which cover]

a. Address immediate care of the resident; [patient;]

b. Persons to be notified; and

c. Reports to be prepared.

(2) Nursing services.

(a) [Twenty-four (24) hour nursing service.] There shall be twenty-four (24) hour nursing services [service] with a sufficient number of nursing personnel on duty at all times to meet the total needs of residents [patients].

(b) Nursing personnel shall include registered nurses, licensed practical nurses, and unlicensed staff members [aides and orderlies].

(c) The amount of nursing time available for resident [patient] care shall be exclusive of non-nursing [nonnursing] duties.

(d) Sufficient nursing time shall be available to assure that each resident[patient]:

1. ~~Receives[Shall receive]~~ treatments, medication, and diets as prescribed;

2. ~~Receives[Shall receive]~~ proper care to prevent decubiti and ~~is[shall be]~~ kept comfortable, clean, and well-groomed;

3. ~~Is[Shall be]~~ protected from accident ~~or[and]~~ injury by the adoption of indicated safety measures; ~~and~~

4. ~~Is[Shall be]~~ treated with kindness and respect.

(3)[(b)] Rehabilitative nursing care.

(a) There shall be an active program of rehabilitative nursing care ~~that helps[directed toward assisting]~~ each resident[patient to] achieve and maintain ~~the resident's[his]~~ highest level of self-care and independence.

(b)[1-] Rehabilitative nursing care initiated in a[the] hospital shall be continued immediately upon admission to the facility.

(c)[2-] Nursing personnel shall:

1. Be taught rehabilitative nursing measures; and

2. Provide rehabilitative nursing care to residents daily, such as[shall practice them in their daily care of patients. These measures shall include]:

a. Maintaining good body alignment and proper positioning of bedfast residents[patients];

b. Encouraging and assisting bedfast residents[patients] to change positions at least every two (2) hours, day and night, to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep residents[patients] active and out of bed for reasonable periods of time, except ~~if[when]~~ contraindicated by physician's orders; ~~and~~

d. Encouraging residents[patients] to achieve independence in activities of daily living by teaching self-care[self-care], transfer, and ambulation activities;

e.[d.] Assisting residents[patients] to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; ~~and~~

f.[e-] Assisting residents[patients] to carry out prescribed physical therapy exercises between visits of the physical therapist.

(4)[(c)] Dietary supervision.

(a) Nursing personnel shall assure that each resident ~~is[patients are]~~ served a diet[diets] as prescribed.

(b) A resident in need of[Patients needing] help [in-]eating shall be assisted promptly upon receipt of meals.

(c) Food and fluid intake ~~[of patients-]~~ shall be observed and deviations from normal shall be reported to the charge nurse.

(d) Persistent unresolved problems shall be reported to the physician.

(5)[(d)] Nursing care plan.

(a) There shall be a written nursing care plan[plans] for each resident[patient] based on the:

1. Nature of illness;[;]

2. Treatment prescribed;[;]

3. Long and short term goals; and

4. Other pertinent information.

(b)[1-] The nursing care plan shall:

1. Be a personalized, daily plan for the resident;[individual patients. It shall-]

2. Indicate the resident's[what] nursing care needs, including:[is needed,]

a. How the nursing care[it] can best be accomplished for the resident;

b. The resident's[each patient, what are the patients] preferences;[; what]

c. Methods and approaches that are most successful;[; and]

d. Any[what] modifications that are necessary to ensure[insure] best results;[;]

3.[2- Nursing care plans shall] Be available for use by all nursing personnel; ~~and;[;]~~

4.[3- Nursing care plans shall] Be reviewed and revised as needed.

(c)[4-] Relevant nursing information from a resident's[the] nursing care plan shall be included with other medical information if the resident ~~is[when patients are]~~ transferred.

(6)[(3)] Specialized rehabilitative services.

(a) Rehabilitative services shall:

1. Be provided upon written order of the physician;

2. Indicate the[which indicates] anticipated goals; and

3. Prescribe[prescribes] specific modalities to be used, including[and] frequency of physical, speech, ~~or[and]~~ occupational therapy services.

(b) Therapy services [shall-]include:

1. Physical therapy;[which includes:

a. ~~Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;~~

b. ~~Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity;]~~

2. Speech therapy; ~~and[which includes:~~

a. ~~Service in speech pathology or audiology;~~

b. ~~Cooperation in the evaluation of patients with speech, hearing, or language disorders;~~

c. ~~Determination and recommendation of appropriate speech and hearing services;]~~

3. Occupational therapy[services which include:

a. ~~Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;~~

b. ~~Guiding the patient in his use of therapeutic creative and self care activities for improving function].~~

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the resident's[patient's] total plan of care.

(d) ~~[Ambulation and therapeutic equipment-]~~ Commonly used ambulation and therapeutic equipment necessary for services ~~[offered-]~~ shall be available, including:

1. ~~[for use in the facility such as -]~~ Parallel bars;[;]

2. Hand rails;[;]

3. Wheelchairs;[;]

4. Walkers;[;]

5. Walkerettes;[;]

6. Crutches; and

7. Canes.

(e) ~~[The-]~~ Therapists shall advise the administrator concerning the purchase, rental, storage, and maintenance of equipment and supplies.

(7)[(4)] Personal care services. Personal care services shall include[;-] assistance with:

(a) Bathing;[;]

(b) Shaving;[;]

(c) Cleaning and trimming of fingernails and toenails;[;]

(d) Cleaning of the mouth and teeth;[; and]

(e) Washing, grooming, and cutting of hair.

(8)[(5)] Pharmaceutical services.

(a) The facility shall provide pharmaceutical services, including[appropriate methods and] procedures that assure the accurate acquiring, receiving,[for obtaining,] dispensing, and administering of all drugs and biologicals to meet the needs of each resident[; developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists].

(b) [If] The facility shall employ or obtain the services of[has a pharmacy department,] a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled[be employed to administer the department].

(c) If the facility does not have a pharmacy department, it shall ensure that[have provision for promptly obtaining] prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy[; pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but maintains[does maintain] a supply of drugs;[;]

4-] the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;[and]

2. Maintain records of ~~the~~their receipt and disposition of bulk drugs; and~~[-]~~

3.~~[2. The consultant pharmacist shall]~~ Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

~~[3. Provisions shall be made for emergency withdrawal of medications from the drug supply.]~~

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a).~~[An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used].~~

~~(9)(f)]~~ Medication services.

~~(a)[4.]~~ Medication administered to a resident~~[All medications administered to patients]~~ shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice~~], advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4)].~~

~~(b) If an order is received by telephone, the order~~[orders] shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen ~~(14) days~~[given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant within forty-eight (48) hours].

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders].

(d) A registered nurse or pharmacist shall review each resident's~~[patient's]~~ medication profile at least monthly.

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication~~[patient's medical]~~ profile at least every two (2) months.

(f) The facility shall release medications to a resident who is discharged upon.~~[The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the] written authorization of the physician or prescribing practitioner.~~

~~(10)[2.]~~ Administration of medications.

~~(a) A licensed health professional may:~~

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

~~(b) A facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:~~

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System; and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN~~[All medications shall be administered by licensed medical or nursing personnel in accordance with KRS 311.530 to 311.620 and Chapter 314 or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel].~~

(c) An intramuscular injection~~[injections]~~ shall be administered by a licensed nurse or ~~[a]~~physician.

(d) If an intravenous injection is~~[injections are]~~ necessary, the injection~~[they]~~ shall be administered by a licensed physician or registered nurse.

(e) Each medication~~[dose]~~ administered shall be recorded in the resident's medical record.

(f)~~[a.]~~ The nursing station shall have readily available items necessary for the proper administration of medications.

~~(g)[b.]~~ The facility shall ensure that~~[In administering medications,]~~ medication cards or other appropriate system is~~[state approved systems shall be]~~ used and checked against the ~~[physician's] orders of a physician or practitioner acting under the scope of practice.~~

~~(h)[c.]~~ A medication that is~~[Medications]~~ prescribed for one (1) resident~~[patient]~~ shall not be administered to any other resident~~[patient]~~.

~~(i)[d.]~~ A resident shall not be allowed to self-administer a medication~~[Self-administration of medications by patients shall not be permitted]~~ except:

1. On special order of the resident's~~[patient's]~~ physician or prescribing practitioner; or

2. In a predischARGE program under the supervision of a licensed nurse.

~~(j) The facility shall assure that a medication error or drug reaction is:~~

1.~~[e. Medication errors and drug reactions shall be]~~ Immediately reported to the resident's~~[patient's]~~ physician or practitioner; and

2. Documented in the resident's~~[an entry thereof made in the patient's]~~ medical record and in~~[as well as on]~~ an incident report.

~~(k)[f.]~~ Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a.] All resident medications shall be plainly labeled with the:

1. Resident's~~[patient's]~~ name~~[, the]~~

2. Name of the drug~~[,]~~

3. Strength~~[,]~~

4. Name of the pharmacy~~[,]~~

5. Prescription number~~[,]~~

6. Date~~[,]~~

7. Prescriber's~~[physician]~~ name; and~~[,]~~

8. Caution statements and directions for use, unless a~~[except where accepted]~~ modified unit dose distribution system is~~[systems conforming to federal and state laws are]~~ used.

~~(l) All~~~~[The]~~ medications ~~[of each patient shall be]~~ kept by the facility shall be:~~[and]~~

1. Stored in their original containers; and

2. ~~[transferring between containers shall be prohibited. All medicines kept by the facility shall be.]~~ Kept in a locked place.

~~(m) The facility shall ensure that:~~

1. All~~[and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.]~~ medications requiring refrigeration are~~[shall be]~~ kept in a separate locked box of adequate size in the refrigerator in the medication area~~[,]~~

2. Drugs for external use are~~[shall be]~~ stored separately from those administered by mouth and injection~~[,]~~

3. ~~[Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until]~~

such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b.] Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are[shall be] returned to the issuing pharmacist or pharmacy for relabeling or disposal;[.]

4. Containers with[having] no labels are appropriately[shall be] destroyed [in accordance with state and federal laws;.]

5.[c.] Cabinets are well-lighted[shall be well-lighted] and of sufficient size to permit storage without crowding; and[.]

6.[d.] Expired medications and medications no longer in use are[shall be] disposed of or destroyed appropriately[in accordance with federal and state laws and regulations.]

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date].

(11)[4.] Controlled substances.

(a) Controlled substances shall be kept under double lock, for example [e.g.,] in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only[.].

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes[.] in which is recorded]

1. The name of the resident;[patient, the-]

2. Date, time, kind, dosage, [balance remaining] and method of administration of each[all] controlled substance[substances];[the]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA[the name of the nurse] who administered the controlled substance;[it,] or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances[In addition, there] shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily;[.] and

2. Schedule III, IV, and V controlled substances count at least one (1) time[once] per week [by those persons who have access to controlled substances]. [All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with 21 C.F.R. 1307.21.]

(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness.

(h) A facility that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(12)[5.] Use of restraints.

(a)[a-] Chemical and physical restraints[No restraints] shall not be used, except as authorized[permitted] by KRS 216.515(6).

(b)[b-] Restraints that require lock and key shall not be used.

(c)[c-] Emergency use of a restraint[Restraints] shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safely.

(d)[d-] Restraints shall not be used as:[-a]

1. Punishment;[-as]

2. Discipline;[-as]

3. A convenience for [the-]staff;[.] or

4. Retaliation[as a mechanism to produce regression].

(13)[6-] Infection control[and communicable diseases].

(a)[a-] There shall be written infection control policies that address[.] which are consistent with the Centers for Disease Control guidelines including:

1. [(i) Policies which address] The prevention of disease transmission; and[.] to and from patients, visitors and employees, including: universal blood and body fluid precautions, precautions for infections which can be transmitted by the airborne route, and work restrictions for employees with infectious diseases;]

2. [(ii) Policies which address the] Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b)[b-] The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [patient]care.

(14)[c-] Sharp wastes.

(a)[(i)] Sharp wastes[.] including needles, scalpels, razors, or other sharp instruments used for patient care procedures;] shall be segregated from other wastes and placed in puncture-resistant[puncture-resistant] containers immediately after use.

(b)[(ii)] A needle or other contaminated sharp[Needles] shall not be recapped[by hand], purposely bent[.] or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c)[(iii)] A sharp waste container shall[The containers of sharp wastes shall either] be incinerated on or off-site[off-site], or be rendered nonhazardous[by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services and the Natural Resources and Environmental Protection Cabinet].

(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(15)[d-] Disposable waste.

(a)[(i) All] Disposable waste shall be:

1. Placed in a suitable bag[bags] or closed container[containers] so as to prevent leakage or spillage;[.] and[shall be]

2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b)[(ii)] The facility shall establish specific written policies regarding handling and disposal of all waste material[wastes].

[(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations;]

(16) Infectious or communicable diseases.

(a)[a-] An individual[Patients] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax;[.]

2. Campylobacteriosis;[.]

3. Cholera;[.]

4. Diphtheria;[;]
5. Hepatitis A;[;]
6. Measles;[;]
7. Pertussis;[;]
8. Plague;[;]
9. Poliomyelitis;[;]
10. Rabies (human);[;]
11. Rubella;[;]
12. Salmonellosis;[;]
13. Shigellosis;[;]
14. Typhoid fever;[;]
15. Yersiniosis;[;]
16. Brucellosis;[;]
17. Giardiasis;[;]
18. Leprosy;[;]
19. Psittacosis;[;]
20. Q fever;[;]
21. Tularemia; or[; and]
22. Typhus.

(b)[f.] A facility may admit a noninfectious[(noninfectious)] tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5)]patient under continuing medical supervision for his tuberculosis disease].

(c)[g.] A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)]Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet].

(d)[h.] If a resident[, after admission, a patient] is suspected of having a communicable disease that would endanger the health and welfare of other residents[patients], the administrator or administrator's designee shall:

1. Contact[assume that] a physician;[is contacted] and
2. Ensure that appropriate measures are taken on behalf of the resident, other residents, and staff[patient with the communicable disease and the other patients].

(17) Laboratory, radiology, and other diagnostic services.

(a) Laboratory services.

1. The facility shall provide or obtain laboratory services to meet the needs of its residents from a laboratory that is:

- a. Part of a hospital; or
- b. Licensed in accordance with KRS 333.030.

2. The facility shall provide or obtain laboratory services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice.

3. The facility shall:

a. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and

b. File in the resident's record a copy of each laboratory report with the:

- (i) Date of the service; and
 - (ii) Name and address of the testing laboratory.
- (b) Radiology and other diagnostic services. The facility shall:

1. Provide or obtain radiology and other diagnostic services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice;

2. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and

3. File in the resident's record a copy of the signed and dated report of x-ray and other diagnostic services.

(18)[(6)] The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the written order of a physician, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in

the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). The physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services.

(a) The facility shall assist residents in obtaining[patients to obtain] regular and emergency dental care.

(b) A[Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory] dentist shall:

1. Provide consultation;[;]
2. Participate in in-service education;[;]
3. Recommend policies concerning oral hygiene;[;] and[shall]
4. Be available in case of emergency.

(c) If[The facility, when] necessary, the facility shall arrange for the resident[patient] to be transported to the dentist's office.

(d) Nursing personnel shall assist the resident with carrying[patient to carry] out the dentist's recommendations.

(19)[(8)] Social services. [Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.]

(a) The facility shall provide social services to:

1. Meet the medically-related social service needs of each resident;

2. Meet the physical, mental, and psycho-social well-being of each resident; and

3. Assist each resident in attaining or maintaining the highest practicable level of functioning.

(b)[4-] Upon admission, the facility shall evaluate a resident's need for social services[As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care].

(c)[3-] If the resident appears eligible for financial assistance necessary to remain in the facility, the facility shall make a referral for a full evaluation of need[Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency].

(d) The facility shall take appropriate action to obtain any needed social services to help resolve issues related to a resident's:

1.[4-] Illness;[Social and emotional factors related to the patient's illness, to his-]

2. Response to treatment; or[and to his-]

3. Adjustment to care in the facility[shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas].

(e)[5-] The facility shall consider factors such as a resident's[Knowledge of the patient's] home situation, financial resources, community resources[available to assist him], and [pertinent-]information related to the resident's[his] medical and nursing care needs in any[requirements shall be used in making] decisions regarding [his-]discharge from the facility.

(f)[(b)] Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information. 4.] The staff member responsible for coordinating social services shall:

1. Participate in clinical staff conferences;[and-]
2. Confer with the attending physician and nurses[at intervals]

during the resident's[patient's] stay in the facility; and[and there shall be evidence in the record of such conferences.]

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.]

3. Include[Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient.] signed social service summaries in the resident's[shall be entered promptly in the patient's] medical record[for the benefit of all staff involved in the care of the patient].

(20)[(9)] Patient activities.

(a) The facility shall provide activities as an adjunct to the active treatment program.

(b) Activities shall:

1. Be suited to the needs and interests of residents; and

2. [patients shall be provided as an important adjunct to the active treatment program and to]Encourage restoration of[to] self-care and resumption of normal activities[Provision shall be made for purposeful activities which are suited to the needs and interests of patients].

(c)[(a)] The activity leader shall use[to the fullest possible extent,]community, social, and recreational opportunities to the fullest extent possible.

(d)[(b)] Residents[Patients] shall be encouraged but not forced to participate in [such]activities.

(e) The facility shall provide suitable activities for residents who are [provided for patients]unable to leave their rooms.

(f)[(e)] The facility shall permit, and assist if needed, residents[Patients] who are able and [who]wish to [do so shall be assisted to]attend religious services.

(g)[(d)] The facility shall honor a resident's[Patients'] request to see their clergymen or church leader and provide[shall be honored and] space [shall be provided]for privacy during visits.

(h)[(e)] The facility shall assure that visiting hours are established in accordance with KRS 216.537 and 216.540[shall be flexible and posted to permit and encourage visiting friends and relatives].

(i)[(f)] The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of residents, such as:

1. [patients. Examples of such supplies and equipment are:

]Books and magazines[;]

2. Daily newspapers[;]

3. Games[;]

4. Stationery[;]

5. Radio and television; and

6. Craft and hobby supplies[the like].

(21)[(40)] Transportation.

(a) If transportation of residents[patients] is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident[patients] who uses a wheelchair[use wheelchairs].

2. An escort or assistant to the driver shall accompany a resident or residents[be provided in transporting patients to and from the facility] if necessary, to help ensure[for the patient's] safety during transport.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency[emergencies].

(22)[(11)] Dietary[Residential] services.

(a) [Dietary services.]The facility shall provide or contract for food services[service] to meet the dietary needs of the residents[patients] including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

(b)1. If[When]a facility contracts for food services[service] with an outside food management company, the company shall provide a licensed[qualified] dietician or certified nutritionist on a full-time, part-time, or consultant basis to the facility.

2. The licensed[qualified] dietician or certified nutritionist shall make recommendations to[have continuing liaison with] the facility's medical and nursing staff [of the facility for recommendations]on dietetic policies affecting resident[patient] care.

3. The food management company shall comply with the[all of the appropriate requirements for] dietary services requirements of this subsection[in this administrative regulation].

(c)[4. Therapeutic diets.]If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietician or certified nutritionist, the responsible staff person shall consult with a licensed[designated person responsible for food service is not a qualified] dietician or certified nutritionist[consultation by a qualified dietician or qualified nutritionist shall be provided].

(d) The facility shall:

1.[2.] Have[Dietary staffing. There shall be] sufficient number of food service personnel;

2. Ensure that the food service staff schedules are[employed and their working hours, schedules of hours, on duty and days off shall be] posted; and[.]

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(e)[3.] Menu planning.

1.[a.] Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a[shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with] physician's orders.

3. Except as established in subparagraph 5. of this paragraph,[b.] meals shall correspond with the posted menu.

4. Menus shall[must] be planned and posted one (1) week in advance.

5. If[When] changes in the menu are necessary[;]

a. Substitutions shall provide equal nutritive value[and]

b. The changes shall be recorded on the menu; and[all]

c. Menus shall be kept on file for at least thirty (30) days.

6.[c.] The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4.] Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

b. A record[Records] of food purchased for preparation shall be on file for thirty (30) days.

c.[b.] Food shall be prepared with consideration for any individual dietary requirement.

d. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

(i) Physician[;]

(ii) Advanced practice registered nurse[as authorized in KRS 314.011(8) and 314.042(8)]; or

(iii) Physician assistant[as authorized in KRS 311.560(3) and (4)].

e.[c.] At least three (3) meals per day shall be served with not more than a fourteen (14)[fifteen (15)] hour span between the substantial evening meal and breakfast.

f. Between-meal snacks and beverages, including[to include] an evening snack before bedtime, shall be available at all times for each resident, unless[offered to all patients. Adjustments shall be made when] medically contraindicated as documented by a physician in the resident's record[indicated].

g.[d.] Foods shall be:

(i) Prepared by methods that conserve nutritive value, flavor, and appearance; and

(ii) [shall be attractively]Served at the proper temperature[temperatures,] and in a form to meet[the] individual needs.

h. A file of tested recipes, adjusted to appropriate yield, shall be

maintained.

i. Food shall be cut, chopped, or ground to meet individual needs.

j. If a resident[patient] refuses foods served, nutritional substitutions shall be offered.

k.[e-] All opened containers or left over food items shall be covered and dated when refrigerated.

7.[5-] Serving of food.

a. If a resident[When a patient] cannot be served in the dining room, trays shall:

(i) Be provided for bedfast patients; and[shall-]

(ii) Rest on firm supports such as overbed tables.

b. Sturdy tray stands of proper height shall be provided for residents[patients] able to be out of bed.

c.[a-] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray[Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff].

d. A resident who requires help with[Patients requiring help in] eating shall be assisted within a reasonable length of time.

e.[b-] The facility shall provide adaptive feeding equipment if needed by a resident[self-help devices shall be provided to contribute to the patient's independence in eating].

f.[6-] Food services shall be provided in accordance with[Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005.

(23)[(b)] Housekeeping and maintenance services.

(a)[1-] The facility shall:

1. Maintain a clean and safe facility free of unpleasant odors; and

2. Ensure that[-] odors are[shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other [obvious-]sources.

(b) The facility shall:

1.[2-] Have available at all times an adequate supply of clean linen essential to the proper care and comfort of residents;

2. Ensure that[shall be on hand at all times-] soiled clothing and linens [shall-]receive immediate attention and [shall-]not be allowed to accumulate;

3. Ensure that[-] clothing and linens[or bedding] used by one (1) resident[patient] shall not be used by another resident unless[until] it has been laundered or dry cleaned; and[-]

4.[3-] Ensure that soiled clothing and linens[linen] shall be:

a. Placed in washable or disposable containers;[-]

b. Transported in a sanitary manner; and

c. Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

(c) Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

(d)[4-] Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

(e) Hand-washing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

(f)[5-] Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

(g)[6-] Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

(h)[7-] Personal laundry [of patients or staff-]shall be:

1. Collected, transported, sorted, washed, and dried in a sanitary manner;[-] separate from bed linens;[-]

2.[8- Patients' personal clothing shall be-]Laundered as often as [is-]necessary; [-]

3. [Laundering of patients' personal clothing shall be] The responsibility of the facility unless the resident or resident's[patient or the patient's] family accepts this responsibility; and[-]

4. [Patient's personal clothing laundered by or through the facility shall be-]Marked or labeled to identify the resident so that it may be[patient owner and-] returned to the correct resident[patient].

(24)[9-] Maintenance. The premises shall be well kept and in good repair as established in this subsection.[-Requirements shall include:-]

(a)[a-] The facility shall ensure[insure] that the grounds are well kept and the exterior of the building, including the sidewalks, steps,

porches, ramps, and fences are in good repair.

(b)[b-] The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures, shall be in good repair. Windows and doors shall be screened.

(c)[c-] Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(d)[d-] A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(25)[(e)] Room accommodations.

(a) A facility shall provide each resident with:

1. A bed that is[Each patient shall be provided a standard-size bed or the equivalent] at least thirty-six (36) inches wide;

2. [-equipped with substantial springs,-]A clean, comfortable mattress with a support mechanism;[-]

3. A mattress cover;[-]

4. Two (2) sheets and a pillow;[-] and[-such]

5. Bed covering [as is required-]to keep the resident[patients] comfortable.

(b) Each bed[Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients] shall be placed so that a resident does not[no patient may] experience discomfort because of proximity to a radiator, heat outlet, or[radiators, heat outlets, or by] exposure to drafts.

(c)[2-] The facility shall provide:

1. Window coverings;[-]

2. Bedside tables with reading lamps;[-](if appropriate;[-])

3. Comfortable chairs;[-]

4. A chest or dresser with a mirror for each resident;

5. [dressers with mirrors,-]A night light;[-] and

6. Storage space for clothing and other possessions.

(d)[3-] A resident[Patients] shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction[unapproved rooms or unapproved detached buildings].

(e)[4-] Basement rooms shall not be used for sleeping rooms for residents[patients].

(f)[5-] Residents[Patients] may have personal items and furniture, if[when it is physically] feasible;[-]

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room].

(26) Living and dining area.

(a)[7-] Each living room or lounge area and recreation area shall have an adequate number of:

1. Reading lamps;[-] and

2. Tables and chairs or settees of sound construction and satisfactory design.

(b)[8-] Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the patients.

[9- Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients-]

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 6, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 502-564-7476; 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 minimum licensure requirements for the operation of and services provided by nursing homes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed nursing homes.

(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 standards for licensed nursing homes.

(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 requires unlicensed staff who administer medications to nursing home residents under the delegation of a nurse to be a certified medication aide (CMA) I or Kentucky medication aide, or be a CMA II. This amendment also makes technical changes to comply with the drafting requirements of KRS Chapter 13A to help improve clarity and flow. Other needed updates include the addition of: 1. A cross-reference to KRS 216.532 to ensure compliance with the requirement nurse aide and home health aide abuse registry checks; 2. A cross-reference to KRS 209.030 to ensure compliance with the requirement for caregiver misconduct registry checks; 3. A cross-reference to KRS 216.789 and 216.793 to ensure compliance with the requirement for criminal background checks; 4. New language related to the confidentiality and security of resident records to ensure compliance with the Health Insurance Portability and Accountability Act of 1996; 5. New language that aligns with the requirements of 201 KAR 2:370 regarding the storage and administration of medications from emergency medication kits; and 6. New language to allow a CMA to administer controlled substances under the delegation of a nurse, including a controlled substance ordered on a PRN basis under certain conditions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services or dementia care services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including nursing homes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards that align with the statutory requirements for licensed nursing homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed nursing homes. Currently, there are 27 nursing homes.

(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: Nursing homes must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a CMA I or Kentucky medication aide, or be a CMA II to administer preloaded injectable insulin to residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this amendment because nursing homes already use certified medication aides.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The use of properly trained and competent certified medication aides leads to fewer errors with drug use and medication administration, thereby helping ensure fewer negative outcomes for residents. Moreover, this amendment expands the scope of certified medication aides by allowing them to administer preloaded injectable insulin if they have a CMA II credential. CMAs are currently restricted to administering oral and topical medications.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all nursing homes regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed nursing homes.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part, 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires nursing homes to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication

aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(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 Division of Health Care (Amendment)

902 KAR 20:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities[the mentally-retarded and developmentally disabled].

RELATES TO: KRS 194A.705(2)(c), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.789, 216.793, 216A.080, 310.031, 315.035, 620.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. 1325.3, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[216B.010-216B.131, 216B.990(1), (2), 222.240 et. seq.]

STATUTORY AUTHORITY: KRS 216B.042[, 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[mandates that the Kentucky Cabinet for Human Resources regulate] health facilities and health services. This administrative regulation establishes minimum[provides] licensure requirements for the operation and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID)[of intermediate care facilities for the mentally-retarded/developmentally disabled (MR/DD)].

Section 1. Definitions.

(1) "Active treatment" means the delivery of resident-specific specialized and generic training, treatment, health services, and related services directed toward the:

(a) Acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(b) Prevention or deceleration of regression or loss of current optimal functional status.[daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or rehabilitative services offered by or procured by contract or other written agreement by the institution for its residents.]

(2) "Administrator" means a person who has a license to practice long-term care administration[is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5) "Developmental disability" is defined by 45 C.F.R. 1325.3[means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self-direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated

services of a lifelong or extended duration].

(6)[(5)] "Developmental nursing services" means treatment of an individual's[a person's developmental] needs by designing interventions to modify the rate or[and/or] direction of the individual's development [especially] in the areas of:

(a) Self-help skills[;]

(b) Personal hygiene[;] and

(c) Sex education[while also meeting his physical and medical needs.

(6) "Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).

(7) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection].

(7) "Intellectual disability" is defined by 34 C.F.R. 300.8(c)(6).

(8) "Interdisciplinary team" means the group of people assembled by the facility who represent the professions, disciplines, or service areas that are relevant to:

(a) Identify the resident's needs; and

(b) Make recommendations for:

1. The resident's individual program plan; and

2. Services designed to meet the resident's needs[persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.

(9) "License" means an authorization issued by the cabinet for the purpose of offering intermediate care MR/DD services.

(10) "MR/DD" means the mentally retarded and the developmentally disabled persons].

(9)[(4)] "Normalization principle" means making available to all people with disabilities patterns of life and conditions of everyday living that are as close as possible to the regular circumstances and ways of life or society[is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(12) "Qualified dietician or nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of the ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(13) "Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.

(14) "Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate].

(10)[(45)] "Qualified social worker" means a person who:

(a) Meets the requirements of 42 C.F.R. 483.430(b)(5)(vi); or

(b) Has[is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or] a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a [qualified] social worker who meets the requirements of 42 C.F.R. 483.430(b)(vi).

(11)[(46)] "A qualified intellectual disability[mental retardation] professional (QIDP)" is defined by 42 C.F.R. 483.430(a)[means a person who has specialized training or one (1) year of experience in

treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:

(a) A psychologist with a master's degree from an accredited program;

(b) A licensed physician;

(c) A educator with a degree in education from an accredited program;

(d) A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:

1. Social work from an accredited program; or

2. A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;

(e) A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.

(f) A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;

(g) A registered nurse;

(h) A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:

1. A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or

2. An associate degree in recreation and one (1) year of experience in recreation; or

3. A high school diploma, or an equivalency certificate; and

a. Two (2) years of experience in recreation; or

b. One (1) year of experience in recreation plus completion of comprehensive in-service training in recreation; or

4. Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or

(i) A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification].

(12)[(47)] "Restraint" means any pharmaceutical[chemical] agent or [any] physical or mechanical device used to restrict the movement of a portion of an individual's body[an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment].

(13)[(48)] "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving[the retention of a resident alone in a locked room].

[(19)] "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(20) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart].

(14)[(21)] "Time-out"["Time out"] means a procedure that[which] involves removing an individual[the person] from a reinforcing situation[;] for a period of time if[when] the individual[person] engages in a specified inappropriate behavior.

Section 2. Scope of Operation and Services. (1) An ICF/IID shall[Intermediate care facilities for mentally retarded and developmentally disabled persons] provide services for all age groups on a twenty-four (24) hour basis, seven (7) days per[a] week[;] in an establishment located in a[with] permanent building with[facilities including] resident beds for individuals with intellectual disabilities or related conditions who require[persons whose mental or physical condition requires] developmental nursing services and[along with] a planned program of active treatment.

(2) The facility shall provide[provides special] programs as indicated by a resident's individual program plan[care plans] to

maximize the resident's mental, physical, and social development in accordance with the normalization principle.

(3) The facility shall ~~intermediate care facilities for the mentally retarded and developmentally disabled must~~ comply with the facility specification requirements ~~of specifications for Intermediate Care Facilities;~~ 902 KAR 20:056.

Section 3. Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the facility; and ~~for~~

(b) Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who shall ~~is~~

(a) Be responsible for the day-to-day operation of the facility;

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's ~~and delegating such responsibility in his~~ absence; and ~~;~~

(c) ~~The administrator shall~~ Not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of each resident ~~the residents. The contract shall be in writing.~~

(4) Administrative records.

(a) The facility shall maintain a ~~bound, permanent, chronological~~ resident registry ~~that documents the~~ ~~showing date of admission;~~

1. Name of each resident;

2. Date of admission; and

3. Date of discharge.

(b) The facility shall ~~require and~~ maintain written recommendations or comments from consultants regarding the active treatment program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records ~~shall be maintained~~.

(d) 1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident, ~~including a medication error~~ ~~errors~~ or drug reaction; ~~reactions;~~

b. Visitor; or

c. Staff member.

2. The report shall:

a. Identify ~~be made and signed by the administrator or nursing services supervisor, and~~ any staff member who witnessed the incident; and ~~;~~

b. ~~The report shall~~ Be filed in an incident file.

(5) Policies. The facility shall ~~have~~ ~~establish~~ written policies and procedures that govern all services provided by the facility. The ~~written~~ policies shall ~~include~~:

(a) Address resident services, including medical, nursing, habilitation, pharmaceutical ~~including medication stop orders policy~~), and residential services;

(b) ~~Require Adult and child protection. The facility shall have written policies which assure~~ the reporting of cases of abuse, neglect, or exploitation of adults ~~or~~ ~~and~~ children ~~to the Department for Human Resources~~ pursuant to KRS 209.030 or 620.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in process ~~Chapters 209 and 620~~;

(c) Ensure that residents are:

1. Free from unnecessary drugs and physical restraints; and

2. Provided active treatment to reduce dependency on drugs and physical restraints; and ~~Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and~~

(d) ~~Missing resident procedures. The facility shall have a written procedure to~~ Specify in a step-by-step manner the actions ~~that~~ ~~which~~ shall be taken by staff ~~if~~ ~~when~~ a resident is ~~determined to be~~ lost, unaccounted for, or on other unauthorized absence.

(6) Resident ~~Patient~~ rights. Resident ~~Patient~~ rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) A resident of an ICF/IID ~~Patients~~ shall:

1. Be admitted only upon the ~~referral~~ ~~approval~~ of a physician; and ~~;~~

2. ~~The facility shall admit only persons who~~ Have a ~~physical or mental~~ condition ~~that~~ ~~which~~ requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of:

1. A physician; ~~;~~

2. A psychologist; ~~;~~

3. A registered nurse; ~~;~~

4. A qualified social worker; and

5. Other professionals, at least one (1) of whom is a QIDP ~~qualified mental retardation professional~~.

(c) Prior to admission, the interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual ~~no less than ninety (90) days~~ ~~not more than three (3) months~~ before the date of admission;

2. Assess the individual's ~~covering~~ physical, emotional, social, and cognitive status ~~factors~~; and

3. ~~2.~~ Determine ~~Prior to admission define~~ the need for services, including a review ~~of service without regard to availability of those services. The team shall review~~ all available ~~and applicable~~ programs of care, treatment, and training ~~and record its findings~~.

(d) Admission decisions shall be made in accordance with 42 C.F.R. 483.440.

(e) ~~(c)~~ Upon admission, the facility shall provide ~~If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;~~

(d) Before admission, the resident and a responsible family member ~~of his family~~ ~~or guardian, if applicable, with written information regarding the facility's policies, including:~~

1. Services offered and charges;

2. ~~Committee shall be informed in writing of the established policies of the facility and fees, reimbursement,~~ Visitation rights during serious illness; ~~;~~

3. Visiting hours; and ~~;~~

4. Type of diets offered,

(f) ~~and services offered; and~~

(e) The facility shall ~~provide and~~ maintain a system for:

1. Identifying each resident's personal property; and ~~facilities for~~

2. Safekeeping ~~of his declared~~ ~~valuables, including~~ ~~assurance that~~ each resident's clothing and other property ~~is~~ ~~shall be~~ reserved for the resident's ~~his~~ own use.

(8) Discharge planning. ~~Prior to discharge~~

(a) The facility shall have a discharge planning program ~~that~~ ~~postinstitutional plan which~~ identifies other settings ~~the residential setting~~ and support services ~~that may~~ ~~which would~~ enable ~~a~~ ~~the~~ resident to live in a less restrictive environment ~~alternative to the current setting~~.

(b) If a resident is to be transferred or discharged, the facility shall comply with requirements of 42 C.F.R. 483.440(4) and (5) ~~Before a resident is released, the facility shall:~~

(a) Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;

(b) Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and

(c) Prepare and place in the resident's record a summary of findings, progress, and plans.

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of a resident to a higher intensity level of care, if indicated ~~residents to other health care facilities which can provide a level of health care not provided by the facility~~.

(b) A ~~Any~~ facility ~~that~~ ~~which~~ does not have a transfer agreement in effect, but ~~has attempted in~~ ~~which documents a~~ good faith ~~attempt~~ to enter into an agreement shall be considered to be

in compliance with the requirements of paragraph (a) of this subsection~~[licensure requirement]~~.

(c) The facility's transfer procedures and agreements shall:

1. Specify the responsibilities of each party~~[institution assumes]~~ in the transfer of a resident~~;~~ ~~and shall~~.

2. Establish responsibility for notifying the other party~~[institution promptly]~~ of an~~[the]~~ impending transfer~~; and~~~~[of a resident and shall]~~.

3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. Initiate a transfer through the resident's physician if the resident's~~[When the resident's]~~ condition exceeds the scope of services of the facility~~; or~~.

2. Contract for services~~;~~ the resident, upon physician's orders ~~(except in cases of emergency)~~, shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource to meet the resident's needs.

(e)~~(e)~~ If a resident's condition improves and the resident may be served in a less restrictive environment~~[When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility]~~, the facility shall offer assistance in making arrangements for the resident~~[residents]~~ to be transferred to a lower intensity level of care~~[facilities providing appropriate services]~~.

(f)~~(e)~~ Except in an emergency, the resident, resident's responsible family member~~[his next-of-kin]~~, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge~~[of any resident]~~.

(g)~~(e)~~ If a resident transfers~~[When a transfer is]~~ to another level of care~~[within the same facility]~~, the complete medical record or a current summary of the resident's medical record shall accompany the resident~~[thereof shall be transferred with the resident]~~.

(h)~~(f)~~ If the resident is transferred to another health care facility or other community resource, a transfer form shall:

1. Accompany the resident~~;~~

2. ~~[The transfer form shall]~~ Include the following~~[at least]~~:

a. Physician's orders~~;~~~~(if available)~~~~;~~

b. Current information regarding the resident's~~[relative to]~~ diagnosis with a history of any health conditions that require~~[problems requiring]~~ special care~~;~~

c. A summary of ~~[the course of]~~ prior treatment, special supplies, or equipment needed for the resident's~~[resident]~~ care~~;~~ and

d. Pertinent social information on the resident and resident's family.

(10) Medical records.

(a) The facility shall maintain a record for each resident that includes documentation of~~[for]~~:

1. Planning and continuous evaluation of the resident's habilitation program, including evidence of the resident's progress~~; and~~

2. Protecting the resident's rights~~[Furnishing documentary evidence of each resident's progress and response to his habilitation program; and]~~

3. Protecting the rights of the residents, the facility and the staff.

(b) Each entry in a~~[All entries in the]~~ resident's record shall be legible, dated, and signed.

(c) Each record shall include:~~[At the time a resident is admitted, the facility must enter in the individual's record the following information:]~~

1. Identifying information, including:

a. Resident's name~~;~~

b. Date of admission~~;~~

c. Birth date and place of birth~~;~~

d. Citizenship status~~;~~

e. Marital status~~;~~ ~~and~~

f. Social Security number;

g.~~[2.]~~ Father's name and birthplace~~;~~

h. Mother's maiden name and birthplace~~;~~ ~~and~~

i. Parents' marital status;

j.~~[3. Name and]~~ Address of parents, ~~[legal]~~ guardian, or responsible family member~~[and next-of-kin]~~ if applicable~~[needed]~~;

and

k.~~[4.]~~ Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

l.~~[5.]~~ Reason for admission or referral~~[problem]~~;

m.~~[6.]~~ Type and legal status of admission;

n.~~[7.]~~ Legal competency status;

o.~~[8.]~~ Language spoken or understood;

p.~~[9.]~~ Sources of support, including Social Security, veterans' benefits, ~~or~~~~[and]~~ insurance;

q.~~[10.]~~ Religious affiliation, if any;

r.~~[11.]~~ Documentation ~~of~~~~[Reports of]~~ the preadmission evaluation~~[evaluations]~~; and

s.~~[12.]~~ Documentation~~[Reports]~~ of assessments~~[previous histories]~~ and any other previous evaluations~~[if any]~~.

(d) Within thirty (30) days~~[one (1) month]~~ after ~~[the]~~ admission~~[of each resident]~~, the facility shall~~[ICF/MR must]~~ enter the following in the resident's record:

1. A report of assessments or reassessments performed by the interdisciplinary team to supplement the~~[the review and updating of the]~~ preadmission evaluation;

2. The resident's specific developmental and behavioral management needs~~[A prognosis that can be used for programming and placement]~~; and

3. A comprehensive functional assessment~~[evaluation]~~ and individual program plan developed~~[designed]~~ by the~~[an]~~ interdisciplinary team.

(e) The facility shall~~[must]~~ enter the following information in a resident's record~~[during his residence]~~:

1. A written report of any accident, seizure, or illness, and treatment services provided~~[Reports of accidents, seizures, illnesses, and treatments for these conditions]~~;

2. Documentation~~[Records]~~ of immunizations;

3. Documentation of the use of any restraint on the resident, including an explanation of~~[Records of all time periods that restraints were used, with justification]~~ and authorization for the restraint~~[each]~~;

4. Documentation of the interdisciplinary team's annual~~[Reports of regular, at least annual,]~~ review and evaluation of the resident's individual program plan, developmental progress, and status~~[of each resident]~~;

5. Observations regarding~~[of]~~ the resident's response to the individual~~[his]~~ program plan used to evaluate~~[to enable evaluation of]~~ its effectiveness;

6. A record~~[Records]~~ of significant behavior incidents;

7. Documentation~~[Records]~~ of family visits and contacts;

8. Documentation of any incident in which the resident is lost, unaccounted for, or on other unauthorized absence~~[Records of attendance and absences]~~;

9. Correspondence pertaining to the resident;

10. ~~[Periodic]~~ Updates as needed~~[of]~~ the information initially recorded at the time of admission; and

11. A record of any applicable~~[Appropriate]~~ authorizations ~~or~~~~[and]~~ consent.

(f) The facility shall~~[ICF/MR must]~~ enter a discharge summary in the resident's record at the time of discharge~~[he is discharged]~~.

(11) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(12)~~[(14)]~~ Personnel.

(a) In accordance with KRS 216.532, an ICF/IID shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, an ICF/IID shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) An ICF/IID shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) An ICF/IID may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A [Job descriptions;] written job description [descriptions] shall be developed for each category of personnel, including: [to include]

1. Qualifications;[;]
2. Lines of authority; and
3. Specific duty assignments.

(f) [(b) Employee records.] Current employee records shall be maintained on each staff member and contain:

1. Name and address;
2. Verification of [shall include a resume of each employee's] training and experience, including evidence of current licensure, [or] registration, or certification, if applicable;
3. Employee [where required by law,] health records;
4. Annual performance evaluations; and
5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection; [records of in-service training and ongoing education, and the employee's name, address and Social Security number].

(13) [(e)] Staffing requirements.

(a) Staffing in the facility shall be sufficient in number and qualifications [have adequate personnel] to meet the personal care, nursing care, supervision, and other needs of each resident [the residents] on a twenty-four (24) hour basis. [The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this administrative regulation.]

(b) [(d)] The licensee shall have a QIPD [qualified mental retardation professional] who is responsible for:

1. Supervising the delivery of each resident's individual program plan [of care];
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the facility's [facility] program;
4. Recording each resident's progress; and
5. Initiating [a periodic] review of each individual program plan [of care] for necessary changes.

(c) [(e)] Each residential [resident] living unit shall maintain direct care staff-to-resident ratios in accordance with 42 C.F.R. 483.430(d), regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:

1. For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);
2. For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and
3. For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).

(f) When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination].

(d) [(g)] A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, [or] fire, or other emergency [emergencies].

(e) [(h)] The use of volunteers shall not be:

1. Included in the [counted to make up] minimum staffing requirements of this subsection; or

2. Relied upon to perform direct care services for the facility.

(14) Nurse staffing.

(a) [(4)] The facility shall have [Supervision of nursing services shall be by] a registered nurse or licensed practical nurse during [employed on] the day shift, seven (7) days per week to supervise nursing services.

(b) The supervising nurse [supervisor] shall have training and experience in the field of intellectual and developmental disabilities [and mental retardation].

(c) If [When] a licensed practical nurse serves as the supervisor, [consultation shall be provided by] a registered nurse shall provide consultation [preferably with a baccalaureate degree,] at regular intervals, not less than four (4) hours weekly.

(d) The supervising nurse's responsibilities [of the nursing services supervisor] shall include developing and maintaining:

1. Nursing service objectives;[;]
2. Standards of nursing practice;[;]
3. [Nursing procedure manuals;[;] and
4. A written job description for each level of nursing personnel;[;]

(e) [(2)] Nursing service personnel at all levels of experience and competence shall:

1. Be assigned responsibilities in accordance with their qualifications;[;]
2. Delegate tasks as authorized under the nurse's scope of practice; [authority commensurate with their responsibility, and]
3. Provide appropriate professional nursing supervision; and
4. [(3)] Participate in the development and implementation of resident care policies.

(15) [(4)] Each [The] facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(16) [(k)] Each facility shall have a full-time staff person designated by the administrator who shall be: [;]

(a) Responsible for the total food service operation of the facility; and

(b) On duty a minimum of thirty-five (35) hours each week.

(17) [(4)] Each facility shall ensure that supportive personnel, consultants, assistants, and volunteers are [shall be] supervised and [shall] function within the policies and procedures of the facility.

(18) [(m)] An employee who contracts a communicable or [Health requirements. No employee contracting an] infectious disease shall:

- (a) Be immediately excluded from [appear at] work; and
- (b) Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(19) All employees of an ICF/IID shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205 [until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be

advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.

3. The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with paragraphs 1 and 2 of this subsection. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements].

(20) In-service training.

(a)[(n)] Each[The] facility shall have a staff training program adequate for the size and nature of the facility with a staff person who is assigned[designated the] responsibility for staff development and training.

(b) The training program shall include:

1. Orientation to acquaint[for] each new employee [to acquaint him-]with the philosophy, organization, program, practices, and goals of the facility;
2. Follow-up[In-service] training for any employee who has not achieved the desired level of competence;
3. Continuing in-service training held at least annually for all employees to update and improve their skills; and
4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services.

(1) The [professional]interdisciplinary team shall assure that:

(a) The health needs of each resident[the residents] are met; and

(b) Each resident has an individual program plan developed in accordance with the requirements of 42 C.F.R. 483.440(c) through (f)[that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:

(a) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.

(b) Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.

(c) Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the

individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care].

(2) Infection control[and communicable diseases].

(a) There shall be written infection control policies that address[-], which are consistent with the Centers for Disease Control guidelines including:

1. [Policies which address -]The prevention of disease transmission[- to and from patients, visitors and employees], including:

- a. Universal blood and body fluid precautions;
- b. Precautions for infections that[which] can be transmitted by the airborne route; and
- c. Work restrictions for employees with infectious diseases; and[-].

2. [Policies which address the -]Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [patient]care.

(c) Sharp wastes.

1. Sharp wastes[-, including needles, scalpels, razors, or other sharp instruments used for patient care procedures,-] shall be segregated from other wastes and placed in puncture-resistant[puncture resistant] containers immediately after use.

2. A needle or other contaminated sharp[Needles] shall not be recapped[-by hand], purposely bent,[-or] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall[The containers of sharp wastes shall either] be incinerated on or off-site[off site], or be rendered nonhazardous [by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet].

4. Any non-disposable sharps be placed in a hard walled container for transport to a processing area for decontamination.

(d) Disposable waste.

1. All disposable waste shall be:

- a. Placed in a suitable bag[bags] or closed container[containers] so as to prevent leakage or spillage;[-] and[- shall be]

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of all waste material[wastes].

3. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

4. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 401 KAR 5:055, Section 9.]

(e) Infectious or communicable diseases. An individual[Patients] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax;[-]
2. Campylobacteriosis;[-]
3. Cholera;[-]
4. Diphtheria;[-]
5. Hepatitis A;[-]
6. Measles;[-]
7. Pertussis;[-]
8. Plague;[-]
9. Poliomyelitis;[-]
10. Rabies (human);[-]
11. Rubella;[-]
12. Salmonellosis;[-]
13. Shigellosis;[-]
14. Typhoid fever;[-]
15. Yersiniosis;[-]
16. Brucellosis;[-]
17. Giardiasis;[-]
18. Leprosy;[-]
19. Psittacosis;[-]

20. Q fever;[;]

21. Tularemia; or[; and]

22. Typhus.

(f) A facility may admit a noninfectious[~~(noninfectious)~~] tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5)[~~patient under continuing medical supervision for his tuberculosis disease~~].

(g) A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)[~~Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet~~].

(3) Resident behavior and facility practices[~~Use of control and discipline of residents~~].

(a) Each[~~The~~] facility shall develop and implement[~~must have~~] written policies and procedures for the management of conduct between staff and clients in accordance with 42 C.F.R. 483.450(a)[~~control and discipline of residents that are available in each living unit and to parents and guardians~~].

(b) The facility shall:

1. Develop and implement written policies and procedures that govern the management of inappropriate resident behavior in accordance with 42 C.F.R. 483.450(b); and

2. [;] Not allow corporal punishment or seclusion of a resident;[;

2. A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or

3. Seclusion of a resident].

(c) Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

(d) Restraints that require lock and key shall not be used.

(e) Emergency use of a restraint shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safely.

(f) A restraint shall not be used as:

1. Punishment;

2. Discipline;

3. Convenience for staff; or

4. Retaliation[~~On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment.~~].

(d) The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use.

(g)[~~(e)~~] An order for physical restraint shall:[may]

1. Be by a physician or other licensed health care practitioner who is acting within the scope of practice and trained in the use of emergency safety interventions;

2. Be carried out by trained staff;

3. Be the least restrictive safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff; and

4. Not be in effect longer than twelve (12) hours.

(h) Appropriately trained staff shall[~~must~~] check a resident placed in a physical restraint at least every thirty (30) minutes and document each check[~~keep a record of these checks~~].

(i) A resident who is in a physical restraint shall[~~must~~] be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint.

(j) A mechanical device[~~devices~~] used for physical restraint shall[~~must~~] be designed and used in a way that:

1. Avoids[~~causes the resident not~~] physical injury; and

2. Results in the least possible physical discomfort[~~Restraints that require lock and key shall not be used~~].

(k)[~~(f)~~] A mechanical support[~~supports~~] used as a protective device shall[~~devices must~~] be designed and applied:

1. Under the supervision of a qualified professional trained in the use of emergency safety interventions;[;] and

2. In accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(l)[~~(g)~~] The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.

(h) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a QIPD[~~qualified mental retardation professional~~];

2. Conducted only with the consent of the affected resident's parents, responsible family member, or [legal]-guardian; and

3. Described in written plans that are kept on file in the facility[~~ICF/MR~~].

(m)[~~(f)~~] A physical restraint used as a time-out device may be applied only:

1. During a behavior modification exercise[~~exercises~~] and[~~only~~]

2. In the presence of the trainer.

(n)[~~(j)~~] A time-out device or [devices and] aversive stimuli shall:

1. [may] Not be used for longer than one (1) hour;[;] and

2. Used[~~then~~] only during a [the] behavior modification program [and only] under the supervision of the trainer.

(4) Medical supervision of residents.

(a) Each[~~The~~] facility shall maintain policies and procedures to ensure[~~assure~~] that each resident is[~~shall be~~] under the medical supervision of a physician.

(b)[~~(a)~~] The facility shall permit the resident, resident's responsible family member, or guardian to have a [or his guardian] shall be permitted his choice of physicians[~~physician~~].

(c)[~~(b)~~] The physician shall visit each resident at least every sixty (60) days or [the residents] as often as necessary[~~and in no case less often than every sixty (60) days~~], unless justified and documented by the attending physician.

(d)[~~(c)~~] No less than ninety (90) days prior to the date of admission, each resident shall have a complete medical evaluation to assess the resident's [include]-social, physical, emotional, and cognitive status[~~factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission~~].

(e)[~~(d)~~] After admission, each resident shall have a medical evaluation[~~reevaluation~~] at least annually[~~shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care~~].

(f)[~~(e)~~] The facility shall have formal arrangements to ensure that a physician or health care practitioner acting within the scope practice is available to provide necessary medical care in case of [shall be made to provide for] medical emergency[~~emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care~~].

(5) Health services.

(a) Health services shall include:

(a) the establishment of a nursing care plan that:

1. Is[~~as~~] part of the total habilitation program for each resident;[;]

2. [Each plan] Shall be reviewed and modified as necessary, but no less than [or at least] quarterly; and[;]

3. [Each plan] Shall include goals[;] and nursing care needs;[;]

(b) Nursing care shall help enable each resident[~~to~~] achieve and maintain the highest degree of function, self-care, and independence, including [with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include]:

1. Positioning and turning in which[;] nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti;[;]

2. Exercises in which[;] nursing personnel shall assist residents in maintaining maximum range of motion;[;]

3. Bowel and bladder training in which[;] nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control;[;]

4. Training in habits of personal hygiene, family life, and sex education that includes ~~[but is not limited to]~~ family planning and venereal disease counseling[.];

5. Ambulation in which[.] nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician; and[.]

6. Administration of medications and appropriate treatment.

~~(c)[7.]~~ A written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite shall be recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

~~(a) The facility shall provide pharmaceutical services, including appropriate methods and procedures that assure the accurate acquiring, receiving, [for obtaining,] dispensing, and administering of all drugs and biologicals to meet the needs of each resident[, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacist].~~

~~(b)[If.]~~ The facility shall employ or obtain the services of [has a pharmacy department,] a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled[be employed to administer the pharmacy department].

~~(c) If the facility does not have a pharmacy department, it shall ensure that [have provision for promptly obtaining] prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy[.] pursuant to KRS 315.035.~~

~~(d) If the facility does not have a pharmacy department, but maintains a supply of drugs, the consultant pharmacist shall:~~

1. Be responsible for the control of all bulk drugs;

2. Maintain records of the receipt and disposition of bulk drugs; and

3. Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

~~(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).~~

~~(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a)[An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used].~~

~~(7)[(e)]~~ Medication [Medication requirement and] services.

~~(a)[4.]~~ Medication administered to a resident [Conformance with physician's orders. All medications administered to residents] shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice.

(b) If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

~~(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued [Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the~~

~~facility's written policy on stop orders].~~

~~(d) A registered nurse or [The] pharmacist [or nurse] shall review the resident's medication profile at least monthly [on a regular basis].~~

~~(e) The prescribing physician or other prescribing practitioner shall review the resident's medication profile at least every two (2) months.~~

~~(f) The facility shall release medications to a resident who is discharged upon [The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the] written authorization of the physician or prescribing practitioner.~~

~~(8)[2.]~~ Administration of medications.

(a) A licensed health professional may:

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

~~(b) A facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:~~

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide (KMA) credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN [All medications shall be administered by licensed nurses or personnel who have completed a state approved training program, from a state approved training provider].

~~(c) Each medication [dose] administered shall be recorded in the resident's medical record.~~

~~(d) An intramuscular injection [injections] shall be administered by a licensed nurse or [a] physician.~~

~~(e) If an intravenous injection is [injections are] necessary, the injection [they] shall be administered by a licensed physician or [a] registered nurse.~~

~~(f)[a-] The nursing station shall have readily available items necessary [required] for the proper administration of medication [readily available].~~

~~(g)[b-] A medication that is [Medications] prescribed for one resident shall not be administered to any other resident.~~

~~(h)[c-] A resident shall not be allowed to self-administer a medication [Self-administration of medications by residents shall not be permitted] except, [for drugs]~~

1. On special order of the resident's physician or prescribing practitioner; or [and]

2. In a predischARGE program under the supervision of a licensed nurse as a part of the resident's treatment plan.

(i) The facility shall assure that a medication error or drug reaction is:

1. [d. Medication errors and drug reactions shall be] Immediately reported to the resident's physician or practitioner; and

2. Documented [pharmacist and an entry thereof made] in the resident's medical record and in [as well as on] an incident report.

~~(j)[3-] The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).~~

~~4. Labeling and storing medications.] All resident medications shall be plainly labeled with the:~~

1. Resident's name; [the]

2. Name of the drug; [.]

3. Strength; [.]

4. Name of the pharmacy; [.]

5. Prescription number; [.]

6. Date; [.]

7. Prescriber's [Physician] name; [.]

8. Caution statements and directions for use, unless a~~except~~ where accepted] modified unit dose distribution system is~~systems~~ conforming to federal and state laws are used.

(k) All~~The~~ medications [of each resident shall be]~~kept by the facility shall be;~~and

1. Stored in their original containers; and

2. ~~[transferring between containers shall be prohibited. All medicines kept by the facility shall be.]~~Kept in a locked place.

(l) The facility shall ensure that:

1. All~~and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.]~~ medications requiring refrigeration are~~[shall be]~~ kept in a separate locked box of adequate size in the refrigerator in the medication area;[-]

2. Drugs for external use are~~[shall be]~~ stored separately from those administered by mouth injection; and

3. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are returned to the issuing pharmacist or pharmacy for relabeling or disposal. Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations].

(9)~~5.]~~ Controlled substances.

(a) Controlled substances shall be kept under double lock, for example~~(i.e.,)~~ in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only~~).~~

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes: [- in which is recorded]

1. The name of the resident; [- the]

2. Date, time, kind, dosage, [balance remaining] and method of administration of each~~[all]~~ controlled substance~~[substances]~~; [- the]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA who administered the controlled substance; [- it,]or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances [In addition, there] shall be responsible for maintaining a recorded and signed;

1. Schedule II controlled substances count daily; [- and

2. Schedule III, IV, and V controlled substances count at least one (1) time~~[once]~~ per week [by those persons who have access to controlled substances].

(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness [All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 C.F.R. 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

(h) A facility that stores and administers controlled substances in an EMK shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(10)~~[(7)]~~ Personal care services.

(a) Each resident shall receive training in personal skills essential for privacy and independence, [be trained to be as independent as possible to achieve and maintain good personal hygiene] including:

1. Bathing in which the facility shall:

a. [of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall] Provide soap, clean towels, and wash cloths for each resident; and[-]

b. Ensure that toilet articles such as brushes and combs shall not be used in common; [-]

2. Personal hygiene; [Shaving]

3. Dental hygiene; [Cleaning and trimming of fingernails and toenails.]

4. Dressing;

5. Grooming;

6. Self-feeding; and

7. Communication of basic needs [Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair].

(b) If a~~[Each]~~ resident [who]~~[does not eliminate appropriately and independently, the facility shall:~~

1. Provide a~~[must be in a regular, systematic]~~ toilet training program; and

2. Document the resident's [a record must be kept of his] progress [- in the program].

(c) A resident who is incontinent shall~~[must]~~ be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program; and all soiled items shall~~[must]~~ be changed.

(d) The staff shall train and if~~[when]~~ necessary, assist a resident with dressing~~[the residents to dress in their own street clothing (unless otherwise indicated by the physician)]~~.

(11)~~[(8)]~~ Dental services.

(a) The facility shall provide or make arrangements for dental services, comprehensive dental diagnostic services, and comprehensive dental treatment in accordance with 42 C.F.R. 483.460(e) through (g).

(b) The facility shall maintain documentation of dental services in accordance with 42 C.F.R. 483.460(h) [shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.

1. Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids].

(c) [2.] A dental professional shall participate, as appropriate, in the facility's interdisciplinary team [serving the facility].

3. There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility.

(b) Dental records shall be part of each resident's record.]

(d)~~[(e)]~~ A dentist shall be responsible for ensuring~~[insuring]~~ that

direct care staff are instructed in the proper use of oral hygiene methods for residents.

(12)(9) Social services.

(a) The facility shall provide social services directly or by contract to~~shall be available either on staff or by formal arrangement with community resources for all~~ residents and their families, including:

1. Evaluation and counseling with referral to, and use of, other planning for community placement; ~~and~~;

2. Discharge and follow up services rendered by or under the supervision of a qualified social worker.

(b) ~~A facility's~~The social worker ~~[of the intermediate care facility, providing services for the mentally retarded and developmentally disabled]~~ shall be under the supervision of a:

1. Qualified social worker; ~~or~~

2. QIDP~~[who is a qualified mental retardation professional]~~.

(c) Social services shall be integrated with other elements of the individual program plan~~[of care]~~.

(d) A plan for social services~~[such care]~~ shall be recorded in the resident's record and ~~[periodically]~~ evaluated in conjunction with resident's individual program plan~~[total plan of care]~~.

~~[e] Social services records shall be maintained as an integral part of case record maintained on each resident.]~~

(13)(40) Recreation services. The facility shall:

(a) Coordinate recreational services with other services and programs that are provided to each resident; ~~and shall;~~

(b)~~(a)~~ Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs;

(c) Maintain in the resident's record a review conducted at least annually of each resident's recreational;

(b) Keep resident records that include periodic surveys of the residents' recreation interests, including a determination of~~and~~ the extent and level of the resident's~~[residents']~~ participation in the recreation program; ~~and~~;

(d)~~(e)~~ Have enough qualified staff who meet the requirements of 42 C.F.R. 483.430(b)(5)(viii) and support personnel available to carry out the various recreation services~~[with the qualifications as defined in the definitions]~~.

(14)(41) Speech-language~~[Speech]~~ pathology and audiology services. The facility shall provide speech-language~~[speech]~~ pathology and audiology services;

(a) By an individual who meets the requirements of 42 C.F.R. 483.430(b)(5)(vii); ~~and~~

(b) As needed to maximize the communication skills of each resident in need of services~~[residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team]~~.

(15)(42) Occupational therapy.

(a) The facility shall provide occupational therapy ~~[shall be provided]~~ by or under the supervision of an~~[a qualified]~~ occupational therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(i) to meet a resident's need for services~~[to residents as required by the resident's needs]~~.

(b) The occupational therapist or occupational therapy assistant shall provide services in accordance with~~[act upon]~~ the individual program plan designed by the ~~[professional]~~ interdisciplinary team~~[of which the therapist is a member]~~.

(16)(43) Physical therapy.

(a) The facility shall provide physical therapy ~~[shall be provided]~~ by or under the supervision of a licensed physical therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(iii) to meet a resident's need for services~~[to residents as required by the resident's needs]~~.

(b) The physical therapist or physical therapy assistant shall provide services in accordance with~~[act upon]~~ the individual program plan designed by the ~~[professional]~~ interdisciplinary team~~[of which the therapist is a member]~~.

(17)(44) Psychological services.

(a) The facility shall provide psychological services as needed by~~[shall be provided by a licensed or certified]~~ psychologist who meets the requirements of 42 C.F.R. 483.430(b)(5)(v).

(b) The psychologist~~[pursuant to KRS Chapter 319 who]~~ shall participate in ~~[the]~~ evaluation of each resident~~[and periodic review]~~, individual treatment, and consultation and training of direct care~~[program]~~ staff as a member of the interdisciplinary team.

(18)(45) Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident~~[residents]~~ who uses a wheelchair~~[use wheelchairs]~~.

2. An escort or assistant to the driver shall accompany a resident or residents~~[be provided in transporting residents to and from the facility]~~ if necessary, to help ensure~~[for the resident's]~~ safety during transport.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency~~[emergencies]~~.

(19)(46) Residential care services.

(a) All facilities shall provide residential care services to all residents including:

1. Room accommodations;

2.~~;~~ Housekeeping and maintenances services;~~;~~ and

3. Dietary services.

(b) ~~[All facilities shall meet the following requirements relating to the provision of residential care services:~~

~~(a)] Room accommodations.~~

~~1. The facility shall provide each resident with:~~

~~a. A~~~~[shall be provided a standard size]~~ bed that is at least thirty-six (36) inches wide;

~~b.~~ ~~[equipped with substantial spring,]~~A clean, comfortable mattress with a support mechanism~~;~~;

~~c. A mattress cover;~~;

~~d. Two (2) sheets and a pillow; and;~~;

~~e.~~ ~~[an such]~~ Bed covering ~~[as is required]~~ to keep the resident comfortable.

2. Each bed~~[Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents] shall be placed so that a~~~~[no]~~ resident does not~~[may]~~ experience discomfort because of proximity to a radiator, heat outlet, or~~[radiators, heat outlets, or by]~~ exposure to drafts.

~~3.~~ ~~[2.]~~ The facility shall provide:

~~a. Window coverings;~~;

~~b. Bedside tables with reading lamps,~~ ~~[if appropriate];~~;

~~c. Comfortable chairs;~~

~~d. A chest or dresser with a mirror for each resident;~~

~~e.~~ ~~[, chests or dressers with mirrors,]~~A night light;~~;~~ and

~~f. Storage space for clothing and other possessions.~~

4.~~[3.]~~ A resident~~[Residents]~~ shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department for Housing, Building, and Construction~~[unapproved rooms or unapproved detached buildings]~~.

5.~~[4.]~~ Basement rooms shall not be used for sleeping rooms for residents.

6.~~[5.]~~ Residents may have personal items and furniture, if~~[when it is physically]~~ feasible.

7.~~[6.]~~ Each living room or lounge area shall have an adequate number of:

~~a. Reading lamps;~~;

~~b. Tables and chairs or settees of sound construction and satisfactory design.~~

8.~~[7.]~~ Dining room furnishings shall be adequate in number, well-constructed~~[well constructed]~~, and of satisfactory design for the residents.

~~(c)]~~ Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.

~~(b)]~~ Housekeeping and maintenance services.

1. The facility shall:

~~a. Maintain a clean and safe facility free of unpleasant odors; and~~

~~b. Ensure that~~ odors are~~[shall be]~~ eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

2. The facility shall:

a. Have available at all times an adequate supply of clean linen essential to the proper care and comfort of residents;

b. Ensure that~~[shall be on hand at all times.]~~ soiled clothing and linens ~~[shall]~~ receive immediate attention and ~~[shall]~~ not be allowed to accumulate;~~[-]~~

c. Ensure that clothing and linens~~[or bedding]~~ used by one resident shall not be used by another unless~~[until]~~ it has been laundered or dry cleaned; and[-]

d.~~[3.]~~ Ensure that soiled clothing and linens~~[linen]~~ shall be:

(i) Placed in washable or disposable containers;~~[-]~~

(ii) Transported in a sanitary manner; and

(iii) Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

3. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

5. Handwashing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

6.~~[5.]~~ Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

7.~~[6.]~~ Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

8.~~[7.]~~ Personal laundry ~~[of residents or staff]~~ shall be:

a. Collected, transported, sorted, washed, and dried in a sanitary manner;~~[-]~~ separate from bed linens;~~[-]~~

b.~~[8.]~~ Resident's personal clothing shall be ~~[-]~~ Laundered ~~[by the facility]~~ as often as necessary;

c. ~~[-]~~ Resident's personal clothing shall be ~~[-]~~ Laundered by the facility unless the resident or the resident's family accepts this responsibility; and

d. ~~[-]~~ Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be ~~[-]~~ Marked or labeled to identify the resident so that it may be~~[owner and]~~ returned to the correct resident.

(20)~~[9.]~~ Maintenance. The premises shall be well kept and in good repair as established in paragraphs (a) through (d) of this subsection.

(a) ~~[Requirements shall include:~~

a.~~[-]~~ The facility shall ensure~~[insure]~~ that the grounds are well kept and the exterior of the building, including the sidewalks, wide walks, steps, porches, ramps, and fences are in good repair.

(b)~~[b.]~~ The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

(c)~~[c.]~~ Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(d)~~[d.]~~ A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(21)~~[(e)]~~ Dietary services.

(a) The facility shall provide or contract for food services~~[service]~~ to meet the dietary needs of the residents, including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

(b)1. If ~~[When]~~ a facility contracts for food services~~[service]~~ with an outside food management company, the company shall provide a licensed~~[qualified]~~ dietician or certified nutritionist on a full-time, part-time~~[full time, part time]~~ or consultant basis to the facility.

2. The licensed~~[qualified]~~ dietician or certified nutritionist shall make recommendations to~~[have continuing liaison with]~~ the medical and nursing staff ~~[of the facility for recommendations]~~ on dietetic policies affecting resident care.

3. The food management company shall comply with the~~[all of the appropriate requirements for]~~ dietary services requirements of this subsection~~[in this administrative regulation]~~.

~~[(c) 4. Therapeutic diets.]~~ If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietician or certified nutritionist, the responsible staff person shall consult with a licensed~~[designated person responsible for food service is not a qualified]~~ dietician or certified nutritionist~~[-]~~, consultation by a qualified dietician or qualified nutritionist shall be provided.

(d) The facility shall:

1.~~[2.]~~ Have a~~[Dietary staffing. There shall be]~~ sufficient number of food service personnel;

2. Ensure that the food service staff schedules are~~[employed and their working hours, schedules of hours on duty, and days off shall be]~~ posted; and[-]

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required from regular dietary assignments.

(e)~~[3.]~~ Menu planning.

1.~~[a.]~~ Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a~~[shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with]~~ physician's orders.

3.~~[b.]~~ Except as established in subparagraph 5. of this paragraph, meals shall correspond with the posted menu.

4. Menus shall~~[must]~~ be planned and posted one (1) week in advance.

5. If ~~[When]~~ changes in the menu are necessary;~~[-]~~

a. Substitutions shall provide equal nutritive value;

b. The changes shall be recorded on the menu; and~~[and]~~

c. Menus shall be kept on file for at least thirty (30) days.

(f)~~[c.]~~ The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.

4. Food preparation and storage.

1.~~[a.]~~ There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

2.~~[b.]~~ Food shall be prepared with consideration for any individual dietary requirement.

3. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

a. Physician;

b. Advanced practice registered nurse; or

c. Physical assistant.

4.~~[c.]~~ At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the ~~[substantial]~~ evening meal and breakfast.

5. Between-meal snacks and beverages, including~~[to include]~~ an evening snack before bedtime, shall be available at all times for each resident, unless~~[offered to all residents. Adjustments shall be made when]~~ medically contraindicated as documented by a physician in the resident's record.

6.~~[d.]~~ Foods shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance; and

b. ~~[shall be]~~ attractively ~~[-]~~ Served at the proper temperature~~[temperatures]~~, and in a form to meet individual needs.

7. ~~[(f)]~~ A file of tested recipes, adjusted to appropriate yield shall be maintained.~~[-]~~

8. Food shall be cut, chopped, or ground to meet individual needs.

9. If a resident refuses the food served, nutritious substitutions shall be offered.

10.~~[e.]~~ All opened containers or leftover food items shall be covered and dated when refrigerated.

(g)[5-] Serving of food.

1. If[When] a resident cannot be served in the dining room, trays shall:

a. Be provided; and[shall]

b. Rest on firm supports.

2. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

3.[a.] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray[Correct positioning of the resident to receive his tray shall be the responsibility of the direct-care staff].

4. A resident in need of[Residents requiring] help [in-]eating shall be assisted promptly upon receipt of meals[according to their training plan].

5.[b.] The facility shall provide adaptive feeding equipment if needed by a resident[self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary].

6. Food services shall be provided in accordance with[Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005[(Kentucky's Food Service Establishment Act and Food Service Code)].

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 6, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 502-564-7476; 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 minimum licensure requirements for the operation of and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed ICF/IID providers.

(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 standards for licensed ICF/IID providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires unlicensed staff who administer medications to ICF/IID residents under the delegation of a nurse to be a certified medication aide (CMA) I or Kentucky medication aide, or be a CMA II. This amendment also makes technical changes to comply with the drafting requirements of KRS Chapter 13A to help improve clarity and flow. Other needed updates include the addition of:

1. A cross-reference to KRS 216.532 to ensure compliance with the requirement nurse aide and home health aide abuse registry checks;

2. A cross-reference to KRS 209.030 to ensure compliance with the requirement for caregiver misconduct registry checks;

3. A cross-reference to KRS 216.789 and 216.793 to ensure compliance with the requirement for criminal background checks;

4. New language related to the confidentiality and security of resident records to ensure compliance with the Health Insurance Portability and Accountability Act of 1996.

5. New language that aligns with the requirements of 201 KAR 2:370 regarding the storage and administration of medications from emergency medication kits; and

6. New language to allow a CMA to administer controlled substances under the delegation of a nurse, including a controlled substance ordered on a PRN basis under certain conditions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including ICF/IID providers.

(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 that align with the statutory requirements for licensed ICF/IID providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed ICF/IID providers. Kentucky's licensed ICFs/IID are as follows: Bingham Gardens, Cedar Lake Lodge, Cedar Lake Lodge – Park Place I, Cedar Lake Lodge – Park Place II, Cedar Lake Lodge – Sycamore Run I, Cedar Lake Lodge – Sycamore Run II, Del Maria ICF/IID, Hazelwood Center, Meadows ICF/IID, Oakwood – Unit 1, Oakwood – Unit 2, Oakwood – Unit 3, Oakwood – Unit 4, Outwood ICF/IID, Wendell Foster, and Windsong ICF/IID.

(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: ICF/IID providers must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a CMA I or Kentucky medication aide, or be a CMA II to administer preloaded injectable insulin to residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this amendment because ICF/IID providers already use certified medication aides.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The use of properly trained and competent certified medication aides leads to fewer errors with drug use and medication administration, thereby helping ensure fewer negative outcomes for residents. This amendment expands the scope of certified medication aides in accordance with the 2023 passage of SB 110 by allowing them to administer preloaded injectable insulin if they have a CMA II credential. CMAs are currently restricted to administering oral and topical medications.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all PCHs and SPCHs regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed ICF/IID providers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 34 C.F.R. 300.8(c)(6) establishes the federal definition of "intellectual disability" under the Individuals with Disabilities Education Act. 42 C.F.R. 483.400 – 483.480 establish health and safety requirements that ICF/IID providers must meet in order to participate in the Medicare and Medicaid programs. 45 C.F.R. 1325.3 establishes definitions, including the federal definition of "developmental disabilities." 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires all long-term care facilities, including ICF/IID providers, to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(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 strict than the federal regulations.

(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 Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

RELATES TO: KRS 194A.060, 202A.011,~~[205.520(3), 205.8451(7), (9), 205.622, 369.101 - 369.120, 422.317, 434.840-434.860, 42 C.F.R. Part 2, 400.203, 415.208, 431.17, 431.52, 431 Subpart F, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 290ee-3, 1320d-2 to 1320d-8]~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450~~[42 U.S.C. 1396a-d]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding community mental health center (CMHC) behavioral health services provided to Medicaid recipients.

Section 1. Definitions. (1) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor;
- (m) A licensed behavior analyst; or
- (n) A behavioral health associate.

(2) "Approved behavioral health practitioner under supervision" means an individual who is under the billing supervision of an approved behavioral health practitioner and who is:

- (a)
 - 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 - 2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 - 3. A marriage and family therapy associate;
 - 4. A certified social worker;
 - 5. A licensed professional counselor associate;
 - 6. A licensed professional art therapist associate;
 - 7. A licensed clinical alcohol and drug counselor associate;
 - 8. A certified alcohol and drug counselor;
 - 9. A licensed assistant behavior analyst;
 - 10. A behavioral health associate; or
 - 11. A licensed alcohol and drug counselor; and
- (b) Employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(3) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

- (4) "Behavioral health associate" means an individual:
 - (a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;
 - (b) Who only provides outpatient services;
 - (c) 1. Who is currently enrolled in a graduate program for a master's degree or doctoral degree in:
 - a. Psychology;

- b. Social work; or
- c. In a behavioral science field that leads to a credential or license; or

2. Who is currently working toward a specialized credential or licensure in the field of mental health or substance use disorder;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services;

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who is designated as a behavioral health associate for no longer than five (5) years; and

(h) That is currently employed by one of the following outpatient treatment providers:

- 1. A behavioral health services organization;
- 2. A behavioral health multi-specialty group;
- 3. A certified community behavioral health clinic;
- 4. A community mental health center;
- 5. A federally qualified Health Center or a federally qualified health center look-alike;

6. A rural health clinic;

7. A provider of crisis continuum services, such as:

- a. A mobile crisis intervention service provider;
- b. A crisis observation stabilization unit; or
- c. A behavioral health crisis transportation provider; or

8. An outpatient behavioral health provider approved by the department.

(5) "Community mental health center" or "CMHC" means a facility ~~that~~[which] meets the community mental health center requirements established in 902 KAR 20:091.

(6)[(2)] "Department" means the Department for Medicaid Services or its designee.

(7)[(3)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(8)[(4)] "Face-to-face" means occurring [:

(a)] in person[; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(9)[(5)] "Federal financial participation" is defined ~~by~~[in] 42 C.F.R. 400.203.

(10)[(6)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

[(7) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual.]

(11) "Paraprofessional practitioner under supervision" means an individual who performs services under the billing supervision of an approved behavioral health practitioner who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor. Paraprofessional practitioners include:

- (a) Peer support specialists;
- (b) Community support associates;
- (c) Registered behavior technicians; or
- (d) A targeted case manager, as established pursuant to 907 KAR Chapter 15.

(12)[(9)] "Professional equivalent" means an individual who:

(a) Met[meets] the professional equivalent requirements established in the [Community Mental Health Center-]Behavioral Health Services Manual for Community Mental Health Centers prior to January 1, 2018; and

(b) Performs services under the billing supervision of an approved behavioral health practitioner, who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(13)[(9)] "Provider" is defined by KRS 205.8451(7).

(14)[(10)] "Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.011[202A.0011](12).

(15)[(11)] "Recipient" is defined by KRS 205.8451(9).

(16) "Telehealth" is defined by KRS 205.510(16).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual:

- (1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;
- (2)(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and
- (b) Possesses at least one (1) year of experience in a mental health setting;
- (3)(a) Is a graduate of a three (3) year nursing educational program; and
- (b) Possesses at least two (2) years of experience in a mental health setting; or
- (4)(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and
- (b) Possesses at least three (3) years of experience in a mental health setting.

Section 3. ~~[Community Mental Health Center]~~Behavioral Health Services Manual for Community Mental Health Centers. The conditions for participation, services covered, and limitations for the community mental health center behavioral health services component of the Medicaid program shall be as specified in:

- (1) This administrative regulation; and
- (2) The ~~[Community Mental Health Center]~~Behavioral Health Services Manual for Community Mental Health Centers.

Section 4. Covered Services. (1) Behavioral health services covered pursuant to this administrative regulation and pursuant to the ~~[Community Mental Health Center]~~Behavioral Health Services Manual for Community Mental Health Centers shall be rehabilitative mental health and substance use disorder services including:

- (a) Individual ~~[outpatient]~~therapy;
- (b) Group ~~[outpatient]~~therapy;
- (c) Family ~~[outpatient]~~therapy;
- (d) Collateral ~~[outpatient]~~therapy;
- (e) Therapeutic rehabilitation services;
- (f) Psychological testing;
- (g) Screening;
- (h) An assessment;
- (i) Crisis intervention;
- (j) Service planning;
- (k) A screening, brief intervention, and referral to treatment;
- (l) Mobile crisis services;
- (m) Assertive community treatment;
- (n) Intensive outpatient program services;
- (o) Residential crisis stabilization services;
- (p) Partial hospitalization;
- (q) Residential services for substance use disorders;
- (r) Day treatment;
- (s) Comprehensive community support services;
- (t) Peer support services;~~[-or]~~
- (u) Withdrawal management;
- (v) Medication assisted treatment (MAT);
- (w) Applied behavior analysis;
- (x) Chemical dependency treatment center services;
- (y) Prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder; or
- (z) A narcotic treatment program (NTP), if separately licensed pursuant to 908 KAR 1:374[Parent or family peer support services].

(2)(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be:

1. Provided by a community mental health center that is:
 - a. Currently enrolled in the Medicaid program in accordance with 907 KAR 1:672; and
 - b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid program in accordance with 907 KAR 1:671;
2. Provided in accordance with:

- a. This administrative regulation; and
 - b. The ~~[Community Mental Health Center]~~Behavioral Health Services Manual for Community Mental Health Centers; and
 3. Medically necessary.
- (b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

Section 5. Electronic Documents and Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

- (2) A CMHC choosing to utilize electronic signatures shall:
 - (a) Develop and implement a written security policy ~~that~~which shall:
 1. Be complied with by each of the center's employees, officers, agents, and contractors; and
 2. Stipulate which individuals have access to which electronic signatures and password authorization;
 - (b) Ensure that electronic signatures are created, transmitted, and stored securely;
 - (c) Develop a consent form that shall:
 1. Be completed and executed by each individual utilizing an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
 - (d) Provide the department, immediately upon request, with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, on the same day of service.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled approved behavioral health practitioner~~[behavioral health service provider]~~, the department shall not reimburse for the same service provided to the same recipient by a community mental health center on the same day of service.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

- (2) A health record shall:
 - (a) Include:
 1. An identification and intake record including:
 - a. Name;
 - b. Social Security number;
 - c. Date of intake;
 - d. Home (legal) address;
 - e. Health insurance information;
 - f. Referral source and address of referral source;
 - g. Primary care physician and address;
 - h. The reason the individual is seeking help including the presenting problem and diagnosis;
 - i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information, if available, regarding:
 - (i) Where the individual is receiving treatment for the physical health diagnosis; and
 - (ii) The ~~name of the~~ physical health provider; and
 - j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:
 - (i) This administrative regulation;
 - (ii) The provider's licensure board;
 - (iii) State law; or
 - (iv) Federal law;
 2. Documentation of the:
 - a. Screening if the community mental health center performed the screening;

- b. Assessment; and
- c. Disposition;
- 3. A complete history including mental status and previous treatment;
- 4. An identification sheet;
- 5. A consent for treatment sheet that is accurately signed and dated; and
- 6. The individual's stated purpose for seeking services;
- (b) Be:
 - 1. Maintained in an organized central file;
 - 2. Furnished to the:
 - a. Cabinet for Health and Family Services upon request; or
 - b. Managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
 - 3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
 - 4. Readily accessible; and
 - 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient; and
- (c) Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.
- (3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.
- (4)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.
- (b) After a recipient's death or discharge from services, a provider shall maintain the recipient's health record for the longest of the following periods:
 - 1. Six (6) years unless the recipient is a minor; or
 - 2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.
- (c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) or (b) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.
- (5) A provider shall comply with 45 C.F.R. Part 164.
- (6) Documentation of a screening shall include:
 - (a) Information relative to the individual's stated request for services; and
 - (b) Other stated personal or health concerns if other concerns are stated.
- (7)(a) A provider's notes regarding a recipient shall:
 - 1. Be made within forty-eight (48) hours of each service visit; and
 - 2. Describe the:
 - a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
 - b. Therapist's intervention;
 - c. Changes in the plan of care if changes are made; and
 - d. Need for continued treatment if continued treatment is needed.
- (b) Include the following:
 - 1. The specific service rendered;
 - 2. The date and actual time the service or services were rendered;
 - 3. The name and practitioner level of the individual who rendered the service;
 - 4. The setting of the service rendered and the amount of time to deliver the service;
 - 5. The relationship of the service or services to the treatment goals and objectives in the plan of care; and
 - 6. The individual's progress toward the treatment goals and objectives in the plan of care.
- (c) 1. Any edit to notes shall:
 - a. Clearly display the changes; and
 - b. Be initialed and dated.

- 2. Notes shall not be erased or illegibly marked out.
- (d)[(e)] If services are provided by a practitioner working under supervision or a paraprofessional practitioner working under supervision, there shall be:
 - 1. A billing supervisor co-signature on the service note within thirty (30) days; and
 - 2. A monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision or the paraprofessional practitioner working under supervision concerning the:
 - a. [1-] Case; and
 - b. [2-] Supervising professional's evaluation of the services being provided to the recipient.
- (8) Immediately following a screening of a recipient, the provider shall perform a disposition related to:
 - (a) A provisional diagnosis;
 - (b) A referral for further consultation and disposition, if applicable; or
- (c) 1. If applicable, termination of services and referral to an outside source for further services; or
- 2. If applicable, termination of services without a referral to further services.
- (9) Any change to a recipient's plan of care shall be documented, signed, and dated by the:
 - (a) Rendering practitioner; and
 - (b) Recipient or recipient's representative.
- (10)(a) Notes regarding services to a recipient shall:
 - 1. Be organized in chronological order;
 - 2. Be dated;
 - 3. Be titled to indicate the service rendered;
 - 4. State a starting and ending time for the service; and
 - 5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.
- (b) Initials, typed signatures, or stamped signatures shall not be accepted.
- (c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:
 - 1. Be recorded in the notes; and
 - 2. Not be reimbursable.
- (11)(a) A termination summary shall:
 - 1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
 - 2. Contain a summary of the significant findings and events during the course of treatment including the:
 - a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;
 - b. Final diagnosis of clinical impression; and
 - 3. Individual's condition upon termination and disposition.
- (b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.
- (12) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.
- (13)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring CMHC shall, if the recipient gives the CMHC written consent to do so, within ten (10) business days of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:
 - 1.a. The Health Insurance Portability and Accountability Act;
 - b. 42 U.S.C. 1320d-2 to 1320d-8; and
 - c. 45 C.F.R. Parts 160 and 164; or
 - 2.a. 42 U.S.C. 290ee-3; and
 - b. 42 C.F.R. Part 2.
- (b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit

in an acute care hospital, or an acute care hospital for care or treatment, the transferring CMHC shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(14)(a) If a CMHC's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of a provider, the health records regarding recipients to whom the CMHC has provided services shall:

1. Remain the property of the CMHC; and
2. Be subject to the retention requirements established in subsection (4) of this section.

(b) A CMHC shall have a written plan addressing how to maintain health records if there is~~in the event of~~ a provider's death.

Section 8. Medicaid Program Participation Compliance. (1) A CMHC shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a CMHC receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the CMHC shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with the claim or health record.

Section 11. Federal Approval and Federal Financial Participation.

[(4)] The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

[(1)]~~[(a)]~~ Receipt of federal financial participation for the coverage; and

[(2)]~~[(b)]~~ Centers for Medicare and Medicaid Services' approval for the coverage.

[(2)]~~The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.]~~

Section 12. Appeal Rights. (1) An appeal of an adverse action by the department regarding a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Incorporation by Reference. (1) The "Behavioral Health Services Manual for Community Mental Health Centers", November 2023~~["Community Mental Health Center Behavioral Health Services Manual", May 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services,

275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/cmhc.aspx>~~(http://www.chfs.ky.gov/dms/incorporated.htm)]~~.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2023

FILED WITH LRC: November 13, 2023 at 0:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 behavioral health coverage provisions and requirements regarding Medicaid program services provided within a community mental health center (CMHC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022), mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health 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 to this administrative regulation incorporates a new manual that is titled the Behavioral Health Services Manual for Community Mental Health Centers. This amendment also contains a definition for "approved behavioral health practitioner" and "approved behavioral health practitioner under supervision" instead of a listing of each provider and each service. This provides for more transparency and compactness in the administrative regulation and manual. The administrative

regulation also contains a definition for the "ASAM Criteria", "paraprofessional practitioner under supervision", and "telehealth." New covered services include withdrawal management, medication assisted treatment, applied behavior analysis, chemical dependency treatment center services, and narcotic treatment programs if separately licensed. The amendment also updates language relating to prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder. The administrative regulation also requires a billing supervisor's signature within thirty (30) days when a service is delivered by an approved behavioral health practitioner under supervision.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align with existing Office of Inspector General (OIG) administrative regulations, to implement an SUD 1115 waiver, to require compliance with the ASAM Criteria, and to provide additional formatting improvements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing an SUD 1115 waiver and making conforming amendments following amendments to 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by providing additional clarity and requirements relating to all behavioral health services performed in CMHCs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CMHCs that wish to expand their behavioral health practice to include the newly covered services. There are currently 14 CMHCs.

(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. All CMHCs utilizing approved practitioner under supervision will need to begin having a billing supervisor sign appropriate documents within 30 days. CMHCs that provide chemical dependency treatment center services or narcotic treatment program services will also need to acquire appropriate certification or licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid program reimbursement for providing behavioral health services to Medicaid recipients. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive certain services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this administrative regulation.

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

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

administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment is not expected to cause additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022).

(2) State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment."

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Fiscal Management (Amendment)

907 KAR 1:061. Payments for ambulance transportation.

RELATES TO: KRS 205.520, 205.8451, 42 C.F.R. 440.170, 447.200 -447.205, 42 U.S.C. 1396, 2005 Acts ch. 173 Parts I., A.22.(i), I., H.3.b.(19)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Department for Medicaid Services for ambulance transportation services.

Section 1. Definitions.

(1) "Advanced life support (ALS) emergency ambulance transportation" means an ambulance service meeting the standards for advanced life support services established in accordance with 202 KAR 7:501.

(2) "Advanced Life Support (ALS) Medical First Response Provider" means an emergency medical professional licensed in accordance with 202 KAR 7:501 to provide ALS care.

(3) "Air ambulance provider" means an air ambulance service licensed in accordance with 202 KAR 7:510.

(4) "Appropriate medical facility or provider" means a local

medical provider other than an emergency room of a hospital who can provide necessary emergency care if a hospital emergency room is not located within a recipient's county of residence or a contiguous county.

(5) "Basic life support (BLS) emergency ambulance transportation" means an ambulance service which meets the standards for basic life support services established in 202 KAR 7:501.

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "Membership or subscription fee" means a payment collected from a recipient by a provider which entitles the recipient to free or discounted ambulance transportation services.

(8) "Recipient" is defined in KRS 205.8451(9).

(9) "Upper limit" means the maximum reimbursement rate the department shall pay an ambulance transportation provider for the service provided.

Section 2. Reimbursement for Licensed Ambulance Services.

(1) The department shall reimburse an ambulance service at the lesser of:

(a) The provider's usual and customary charge for the service; or

(b) An upper limit established in this section for the service plus, if applicable, a rate for oxygen and reimbursement for disposable medical supplies utilized during an ambulance transportation service.

(2) Except for an air ambulance transportation service, the upper limit for an ambulance service shall be calculated by adding a base rate, mileage allowance, and flat rate fees as follows:

(a) For ALS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of 110 dollars;

2. A mileage allowance of four (4) dollars per mile; and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(b) For BLS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of eighty-two (82) dollars and fifty (50) cents;

2. A mileage allowance of three (3) dollars per mile; and

3. If transported concurrently, a flat rate of twenty (20) dollars for an additional recipient;

(c) For ALS or BLS emergency ambulance transportation to an appropriate medical facility or provider:

1. A base rate of sixty (60) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient;

(d) For BLS emergency ambulance transportation to the emergency room of a hospital during which the services of an ALS Medical First Response provider are required to stabilize the recipient:

1. A base rate of 110 dollars;

2. A mileage allowance of four (4) dollars per mile; and

3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(e) For BLS emergency ambulance transportation to an appropriate medical facility or provider during which the services of an ALS Medical First Response provider are required:

1. A base rate of sixty (60) dollars;

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and

3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient; ~~and~~

(f) For non emergency ambulance transportation during which the recipient requires no medical care during transport:

1. A base rate of fifty-five (55) dollars; and

2. A mileage allowance of two (2) dollars per mile;

(g) For a treatment in place encounter during which the recipient receives care but is not transported to a medical facility:

1. A base rate of at least eighty-two (82) dollars and fifty (50) cents and as consistent with Healthcare Common Procedure Coding

System (HCPCS) code A0998 at the Kentucky Medicaid Transportation Fee Schedule rate for code A0249 (BLS base, hospital); and

2. Mileage shall not be billable; and

(h) For a treatment, triage, and transport service during which the recipient receives care, is assessed as not needing emergent treatment, and is transported to an appropriate medical facility that is not a hospital emergency department:

1. A base rate of at least eighty-two (82) dollars and fifty (50) cents and as consistent with Healthcare Common Procedure Coding System (HCPCS) code A0998 at the Kentucky Medicaid Transportation Fee Schedule rate for code A0249 (BLS base, hospital); and

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile.

(3) In addition to the rates specified in subsection (2) of this section, the department shall reimburse for:

(a) The administration of oxygen during an ambulance transportation service at a flat rate of ten (10) dollars per one (1) way trip if medically necessary; and

(b) The cost of disposable supplies actually utilized during an ambulance transportation service if the provider lists the supplies used during the service on an invoice. The department shall not reimburse for a supply item that is not disposable or is not actually used during the ambulance transportation service.

(4) Reimbursement for air ambulance transportation shall be an all inclusive rate which shall be the lesser of:

(a) The provider's usual and customary charge; or

(b) An upper limit of \$3,500 per one (1) way trip.

(5) Payment for a service identified in subsections (2) through (4) of this section shall be contingent upon a statement of medical necessity, which:

(a) Shall be maintained in accordance with 907 KAR 1:060, Section 5(2); and

(b) May be requested by the department for post-payment review.

(6) If a recipient has paid a membership or subscription fee to a transportation provider, the provider shall not be eligible for Medicaid reimbursement for service provided to the recipient.

Section 3. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 4. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 25, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 method for determining amounts payable by the Department for Medicaid Services for ambulance transportation services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining amounts payable by the Department for Medicaid Services for ambulance transportation services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing methods for determining amounts payable by the Department for Medicaid Services for ambulance transportation services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the method for determining amounts payable by the Department for Medicaid Services for ambulance transportation 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 amendments introduce two (2) new services that can be provided by ambulance transportation providers. A new service and payment rate of treatment in place and a new service, payment rate, and mileage rate of treatment, triage, and transport to a medical facility other than a hospital emergency department when emergent treatment is not needed are established.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to establish the base rate for treatment in place and establish the base rate and the mileage rate for treatment, triage, and transport services to a medical facility other than a hospital emergency department when emergent treatment is not needed.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by establishing the base rate for treatment in place and establishing the base rate and the mileage rate for treatment, triage, and transport services to a medical facility other than a hospital emergency department when emergent treatment is not needed.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by establishing the base rate for treatment in place and establishing the base rate and the mileage rate for treatment, triage, and transport services to a medical facility other than a hospital emergency department when emergent treatment is not needed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: Licensed ambulance service providers will be affected, there are currently at least 212 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: As appropriate, providers may need to refer to this administrative regulation to determine the amounts payable by the Department for Medicaid Services for ambulance services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers and provider groups will benefit due to the availability of treatment in place and triage and transport services to defray costs associated these types of ambulance services.

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

(a) Initially: DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(b) On a continuing basis: DMS does not anticipate any additional costs in implementing 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, DMS does not assess that an 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 neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS anticipates the cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year due to the availability of new services types that will address all types of ambulance runs.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates the cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the subsequent years due to the availability of new services types that will address all types of ambulance runs.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

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? DMS and any local government that operates an ambulance service 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 194A.030(2), 194A.050(1), 205.520(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 is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate any additional costs in implementing this amendment in subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.170

(2) State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

(3) Minimum or uniform standards contained in the federal mandate. Requires state Medicaid agencies to provide transportation by ambulance.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Amendment)

907 KAR 3:066. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 96A.095, 205.520, 281.010, 281.605(9), 281.635(5), 281.872, 281.875, 42 C.F.R. 431.53, 440.170, 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the Cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions.

(1) "Capitated rate" means one (1) amount paid each month:

(a) For each Medicaid recipient covered under authority of the waiver; and

(b) That is:

1. Not a statewide rate; and
2. Set individually for each human service transportation delivery region as established in 603 KAR 7:080.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.

(4) "Nonemergency medical transportation or NEMT" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.

(5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services, the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

Section 3. Coverage.

(1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.

(2) A Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient meets the following conditions:

(a) The recipient is traveling to or from a Medicaid-covered service;

(b) The service is determined to be of medical necessity; and

(c)

1. The recipient does not own a vehicle;

2. The recipient owns a vehicle, but a clinician, employer, school, mechanic, or transportation authority issues a note that is submitted by the recipient that states the vehicle is not:

a. Operable; or

b. Usable for the recipient.

3. a. A recipient who is under the age of eighteen (18) shall have the same vehicle ownership status as the custodial parent or legal guardian.

b. A parent or guardian may request a two (2) week exemption

to subparagraph a. of this paragraph in order to allow a child recipient to attend medically necessary services.

(3)(a) A transportation provider shall not self-refer or solicit a recipient or a recipient's parent or guardian to use NEMT if the recipient or recipient's parent or guardian owns or has access to appropriate transportation pursuant to this section.

(b) A transportation provider that self-refers or solicits a recipient or a recipient's parent or guardian pursuant to paragraph (a) of this subsection may be excluded from offering NEMT on a permanent or temporary basis [Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available].

Section 4. Reimbursement.

(1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

Section 5. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

Section 7. Federal Approval and Federal Financial Participation.

The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 2, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 Medicaid nonemergency medical transportation service policies and requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to "ensure necessary transportation for recipients to and from providers" as required by 42 C.F.R. 431.53.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with 42 C.F.R. 431.53 by establishing Medicaid nonemergency medical transportation service policies and requirements. The policies and requirements are authorized by 42 U.S.C. 1396a(a)(70).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid nonemergency medical transportation service policies 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 changes the administrative regulation by improving and more clearly stating those circumstances under which a recipient may use nonemergency transportation. The administrative regulation now allows an individual to use nonemergency transportation if they do not own a vehicle. It also allows for a clinician's, employer's, school's, mechanic's, or transportation authority's note to establish that a vehicle is not operable or suitable for the individual that needs transportation. A two-week exemption period is available for a parent to request to allow children to attend medically necessary services. A prohibition on self-referral is established for transportation brokers, in addition potential penalties for self-referral are proposed. Finally, a federal approval and participation clause is included in the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to improve the language surrounding eligibility to utilize nonemergency medical transportation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing subjectivity in the administration of the nonemergency medical transportation benefit.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the content of the authorizing statutes by removing subjectivity in the administration of the nonemergency medical transportation benefit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 2,420,907 nonemergency medical transportation trips made during SFY 2022.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Recipients who need transportation will be able to access it more easily. Transportation brokers will be prohibited from self-referral.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS does not anticipate any expenses for this population.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will be more freely able to access medically necessary services.

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

(a) Initially: DMS does not anticipate additional costs on an initial basis in implementing the amendments to this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs on a continuing basis in implementing the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.53.

(2) State compliance standards. KRS 194A.030(2) requires the Department for Medicaid Services to "serve as the single state agency in the commonwealth to administer Title XIX of the Federal Social Security Act."

(3) Minimum or uniform standards contained in the federal mandate. The Department for Medicaid Services is required to "ensure necessary transportation for recipients to and from providers."

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in

administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Amendment)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions.

(1) "Administrative Services Organization" means a business entity that:

(a) Is contracted with the department;

(b) Administers:

1. Mobile crisis services;

2. Crisis observation stabilization services;

3. Behavioral health crisis transportation; and

4. Associated crisis residential stabilization services.

(c) Is responsible for:

1. Oversight of crisis continuum services;

2. Required reporting related to crisis continuum services;

3. Billing for crisis continuum services; and

4. Developing a continuum of crisis services providers that is sufficient to ensure access to mobile crisis services, crisis observation stabilization services, behavioral health crisis transportation, and crisis residential services for all residents of the commonwealth on a twenty-four (24) hour, seven (7) day per week, 365 day per year basis.

(2) "Adult peer support specialist" means an individual who meets the certification requirements for an adult peer support specialist established in 908 KAR 2:220.

(3)[(2)] "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(4)[(3)] "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst.

(5)[(4)] "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; [and]

9. A licensed assistant behavior analyst; [and]

10. A behavioral health associate; or

11. A licensed alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6)[(5)] "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(7) "Behavioral health associate" means an individual:

(a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

(b) Who only provides outpatient services;

(c)1. Who is currently enrolled in a graduate program for a master's degree or doctoral degree in:

a. Psychology;

b. Social work; or

c. In a behavioral science field that leads to a credential or license; or

2. Who is currently working toward a specialized credential or licensure in the field of mental health or substance use disorder;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services;

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who is designated as a behavioral health associate for no longer than five (5) years; and

(h) That is currently employed by one of the following outpatient treatment providers:

1. A behavioral health services organization;
2. A behavioral health multi-specialty group;
3. A certified community behavioral health clinic;
4. A community mental health center;
5. A federally qualified Health Center or a federally qualified health center look-alike;

6. A rural health clinic;

7. A provider of crisis continuum services, such as:

- a. A mobile crisis intervention service provider;
- b. A crisis observation stabilization unit; or
- c. A behavioral health crisis transportation provider; or
8. An outpatient behavioral health provider approved by the department.

(8) "Behavioral health crisis" means any behavioral, substance use disorder, or psychiatric situation perceived to be a crisis by the individual experiencing or witnessing it.

(9)[(6)] "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(10)[(7)] "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(11)[(8)] "Behavioral health crisis transportation" means the use of a behavioral health support vehicle, to transport a Medicaid recipient alleged to be in a behavioral health crisis to a higher level of care.

(12) "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);

(b) 908 KAR 1:370 and 908 KAR 1:374 for a behavioral health services organization tier II (BHSO II); or

(c) 908 KAR 1:370 and 908 KAR 1:372 for a behavioral health services organization tier III (BHSO III).

(13)[(9)] "Behavioral health crisis transport vehicle" means an automobile that:

(a) Includes a driver's compartment that is separated from the passenger compartment in a way that allows the driver and passenger to communicate and visualize one another but that prohibits the passenger from easily accessing the driver or any control for operating the vehicle; and

(b) Has a passenger compartment with:

1. Two (2) or more traditional vehicle seats with appropriate seat belts;

2. No exposed sharp edges;

3. Doors that automatically lock and that are not capable of opening while the vehicle is in motion, such as a child lock feature.

(14) "Billing provider" means the individual, group of individual providers, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(15)[(40)] "Billing supervisor" means an individual who [is]:

(a) Is:

1. A physician;
2. A psychiatrist;
3. An advanced practice registered nurse;
4. A physician assistant;
5. A licensed clinical alcohol and drug counselor;

6. A licensed psychologist;

7. A licensed clinical social worker;

8. A licensed professional clinical counselor;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed marriage and family therapist;

12. A licensed professional art therapist; or

13. A licensed behavior analyst; [and]

(b) Is employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor;

(c) Conducts the following supervisory duties and requirements on behalf of the practitioner under supervision:

1. Records a co-signature on a service note within thirty (30) days; and

2. Prepares a monthly supervisory note that reflects consultations with the practitioner or paraprofessional working under supervision that includes the supervising professional's evaluation of the services being provided to each recipient;

(d) Is not required to be the same provider type as the practitioner under supervision.

(16)[(44)] "Certified alcohol and drug counselor" is defined by KRS 309.083[309.080(2)].

(17)[(42)] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(18)[(43)] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(19)[(44)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(20)[(45)] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(21) "Community-based mobile crisis intervention services" or "(MCIS)" means a dispatch of a mobile crisis team to the location of an individual who is experiencing a behavioral health crisis.

(22)[(46)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(23)[(47)] "Co-occurring disorder" means a mental health and substance use disorder.

(24)[(48)] "Department" means the Department for Medicaid Services or its designee.

(25)[(49)] "Electronic signature" is defined by KRS 369.102(8).

(26)[(20)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(27)[(24)] "Face-to-face" means occurring in person.

(28)[(22)] "Family peer support specialist" means an individual who meets the certification requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(29)[(23)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(30)[(24)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(31)[(25)] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department.

(32)[(26)] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(33)[(27)] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(34)[(28)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(35)[(29)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(36)[(30)] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(8)[(4)].

(37)[(34)] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9)[(5)].

~~(38)~~~~(32)~~ "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

~~(39)~~~~(33)~~ "Licensed marriage and family therapist" is defined by KRS 335.300(2).

~~(40)~~~~(34)~~ "Licensed professional art therapist" is defined by KRS 309.130(2).

~~(41)~~~~(35)~~ "Licensed professional art therapist associate" is defined by KRS 309.130(3).

~~(42)~~~~(36)~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

~~(43)~~~~(37)~~ "Licensed professional counselor associate" is defined by KRS 335.500(4).

~~(44)~~~~(38)~~ "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

~~(45)~~~~(39)~~ "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

~~(46)~~~~(40)~~ "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6) and (9).

~~(47)~~~~(41)~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

~~(48)~~~~(42)~~ "Marriage and family therapy associate" is defined by KRS 335.300(3).

~~(49)~~~~(43)~~ "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

~~(50)~~~~(44)~~ "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(51)~~~~(45)~~ "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

~~(52) "Mobile crisis team" means a professional working group that performs a mobile crisis intervention service prior to provision of a behavioral health secure transportation service and that consists of at least:~~

~~(a) One (1) approved behavioral health practitioner who is licensed to perform an assessment; and~~

~~(b) One (1) approved behavioral health practitioner or approved behavioral health practitioner under supervision.~~

~~(53)~~~~(46)~~ "Physician" is defined by KRS 205.510~~(12)~~~~(14)~~.

~~(54)~~~~(47)~~ "Physician assistant" is defined by KRS 311.840(3).

~~(55)~~~~(48)~~ "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavior technician;

(c) A community support associate;~~[-or]~~

(d) A peer support specialist; or

~~(e) A targeted case manager, as established pursuant to this chapter.~~

~~(56)~~~~(49)~~ "Provider" is defined by KRS 205.8451(7).

~~(57)~~~~(50)~~ "Provider abuse" is defined by KRS 205.8451(8).

~~(58)~~~~(51)~~ "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

~~(59)~~~~(52)~~ "Recipient" is defined by KRS 205.8451(9).

~~(60)~~~~(53)~~ "Recipient abuse" is defined by KRS 205.8451(10).

~~(61)~~~~(54)~~ "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

~~(62)~~~~(55)~~ "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

~~(63)~~~~(56)~~ "Registered behavior technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for

an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant or by an assistant assessor overseen by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

~~(64)~~~~(57)~~ "Registered nurse" is defined by KRS 314.011(5).

~~(65)~~~~(58)~~ "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

~~(66)~~~~(59)~~ "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

~~(67)~~~~(60)~~ "Telehealth" is defined by KRS 205.510~~(16)~~~~(15)~~.

~~(68)~~~~(61)~~ "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

~~(69)~~~~(62)~~ "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 6, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid

administrative regulations regarding behavioral health services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15.

(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 definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements new definitions for "accountable services organization", "behavioral health associate", "behavioral health crisis", "behavioral health secure crisis transportation", "behavioral health support vehicle", "mobile crisis intervention services", and "mobile crisis team". In addition, "approved behavioral health practitioner under supervision" is amended to include a "behavioral health associate", and the term "billing supervisor" is further clarified.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, residential crisis stabilization units, accountable service organizations, and any entity providing crisis continuum services. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers and provider groups will benefit due to the additional clarity provided by the amendments and new definitions included in this updated administrative regulation.

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

(a) Initially: DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(b) On a continuing basis: DMS does not anticipate any additional costs in implementing 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds

authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, DMS does not assess that an 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 neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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? DMS will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate any additional costs in implementing this amendment on an initial basis.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate any additional costs in implementing this amendment in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. There is no federal mandate to define terms in an administrative regulation.

(2) State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. . . to expand the behavioral health network to allow providers to provide services within their licensure category."

(3) Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define terms in an administrative regulation.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

922 KAR 2:100. Certification of family child-care homes.

RELATES TO: KRS Chapter 13B, 158.030, 186.018, 186.020, 189.125, 194A.050(1), 199.011(3), (4), 199.894(1), (5), 199.895, 199.8951, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.011(5), 527.070(1), 600.020, 620.020(8), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9831-9852, 9857-9858r

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8) of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(2) "Cabinet" is defined by the KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 11 of this administrative regulation, and receives payment from a contract entity rather than the child care center.

(5) "Corporal physical discipline" is defined by KRS 199.896(18).

(6) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(7) "Family child-care home" is defined by KRS 199.894(5).

(8) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9) "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(10) "Infant" means a child who is less than twelve (12) months of age.

(11) "Parent" is defined by 45 C.F.R. 98.2.

(12) "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(13) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(14) "Premises" means the building and contiguous property in which child care is certified.

(15) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(16) "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(17) "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(18) "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19) "Toddler" means a child between the age of twelve (12) months and thirty-six (36) months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee of ten (10) dollars pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1

through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis.

(3) An applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant, ~~and~~ child, and adult:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall:

(a) Complete background checks in accordance with 922 KAR 2:280; and

(b) Submit a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 19(7) of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section, and Sections 10 through 20 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) In accordance with KRS 199.8982(1)(a)(6), demonstrate completion of six (6) hours of cabinet-approved pre-service orientation training in the following topics:

1. Federal minimum health and safety requirements established in 45 C.F.R. 98.41 related to:

a. Prevention and control of infectious diseases, including immunization;

b. Prevention of sudden infant death syndrome and use of safe sleeping practices;

c. Administration of medication, consistent with standards for parental consent;

d. Prevention of and response to emergencies due to food and allergic reactions;

e. Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

f. Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

g. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event;

h. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants; and

i. Precautions in transporting children;

2. Recognizing and reporting child abuse; and

3. Developmentally appropriate practices[accordance with KRS 199.8982(4)(a)(6); and

(b) Develop and implement a written plan for obtaining;

1. Three (3) hours of cabinet-approved training within the first year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in

accordance with KRS 199.8982(2); and

2. Nine[nine] (9) hours of [annual-]cabinet-approved training annually between July 1 and the following June 30 of each subsequent year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years as required in Section 10(1) of this administrative regulation.

(10)(a) A family child-care home certificate shall:

1. Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. Contain the:

a. Name and address of the child care provider;

b. Maximum number of unrelated children who may be served;

c. Identification number; and

d. Effective and expiration dates; and

3. Be valid for only the:

a. Name of the individual authorized on the certificate to operate a family child-care home; and

b. Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall expire two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form;

(b) A nonrefundable renewal fee of ten (10) dollars every two (2) years pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 20 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-04 submitted in accordance with subsection (2) of this section;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-04 submitted in accordance with subsection (2) of this section if the requirements in Sections 2, 3, and 10 through 20 of this administrative regulation are met.

(4) The cabinet shall conduct an annual unannounced inspection of the home pursuant to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(c)(2)(K).

Section 4. Statement of Deficiency and Corrective Action Plans.

(1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 20 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within fifteen (15)[ten-(10)] calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

- (b) The date action was or shall be completed;
- (c) Action utilized to assure ongoing compliance;
- (d) Supplemental documentation requested as a part of the plan;

and

- (e) Signature of the provider and the date of signature.
- (4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

- (a) Accept the plan;
- (b) Not accept the plan; or
- (c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

- (a) Submit an amended plan within fifteen (15) calendar days of notification; or

- (b) Have its certification revoked or denied for failure to:

- 1. Submit an acceptable amended plan; or
- 2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10) The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household has a history of behavior that may impact the safety or security of a child in care including:

(a) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(b) Other behavior or condition indicating inability to provide reliable care to a child.

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 20 of this administrative regulation and KRS 199.8982;

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

- a. A child in care; or
- b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, or license subject to denial, revocation, or voluntary relinquishment pending an investigation or adverse action, the

cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7) year period has expired from the:

- a. Date of the prior notice of denial or revocation; or
- b. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or a pending adverse action; and

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, or license to operate as a child care provider denied or revoked for:

(i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(ii) Discontinuation or disqualification from participation in the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020, or another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC). (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(a) Shall enter into an agreement with the provider directing the requirements for remedying a violation and achieving compliance;

(b) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

(d) May require the certified family child-care home to participate in additional training; and

(e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

(2) A DPOC shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

(a) Fails to meet a condition of the DPOC; or

(b) Violates a requirement of the DPOC.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125. (1) An emergency order issued pursuant to this section shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition.

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the certification's suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(6)(a) Within five (5) working days of completion of the hearing,

the cabinet's hearing officer shall render a written decision affirming or reversing the emergency order to suspend certification.

(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider's certification shall be revoked if the condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation. (1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care home due to a medical condition;

(f) Does not meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 20 of this administrative regulation;

(g) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or

(h) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(2)(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home by personal service delivery or through certified mail.

(b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.

(3) The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials, Suspension, and Revocation. (1) If the cabinet denies certification, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) Between July 1 and June 30 of each subsequent year of operation~~[the following calendar year]~~, a provider shall complete at least nine (9) hours of cabinet-approved early care and education training~~[beginning the second year of operation]~~, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years in accordance with KRS 199.8982(2)~~[to be completed:~~

1. ~~Within the second year of employment or operation in child care; and~~

2. ~~Every subsequent five (5) years of employment or operation in child care]~~.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (8) of this section shall be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) A provider shall have an assistant present if the provider cares for more than:

(a) Four (4) infants, including the provider's own or related infants; or

(b) Six (6) children under the age of six (6) years old, including the provider's own or related children.

(4) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(5) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and

(b) Employ an assistant during the period of respite.

(6) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant, ~~[and] child, and adult:~~

(a) Cardiopulmonary resuscitation (CPR)~~[CPR]~~; and

(b) First aid.

(7) An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

(8) An assistant ~~[used in excess of fourteen (14) calendar days during a one (1) year period]~~ shall demonstrate completion of the training required by Section 2(9) of this administrative regulation within the timeframes established therein~~[at least nine (9) hours of cabinet-approved training between July 1 and June 30 of the following calendar year beginning the second year of employment, including:~~

(a) ~~Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(2); and~~

(b) ~~Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section]~~.

(9) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(10) During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in

care.

(11) During a provider's absence, an assistant shall be physically present with a child in care during hours of operation.

(12) A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14, if a child receives services from the provider through the Child Care Assistance Program.

(13) A provider and an assistant shall not: Repeat online training courses, including pre-service orientation, unless:

(a) Five (5) years have passed since the online training was completed; or

(b) They are required to as part of a disciplinary directive by a state agency.

Section 11. Contract Substitute Staff Member Requirements. (1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 10 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the certified child-care home and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the certified child-care home and maintained at the home for five (5) years;

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the certified child-care home while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:280 and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

(a) KRS 199.8982(1)(a) 6 and (2), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 12. The General Requirements of the Family Child-Care Home Environment.

(1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;
2. Light; and
3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector, including in the kitchen area and in the children's sleeping areas;

(c) Properly maintained fire[Fire] extinguisher, including in the kitchen area; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or
2. Has an attached garage.

(3) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, [and] flammable liquids, and all fire hazards;

(e) Plastic bags; and

(f) Litter and rubbish.

(4) Alcohol shall:

(a) Not be consumed by any person on the certified family child-care home's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

(a) Key; or

(b) Combination.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, [or] freestanding heater or fireplace, or other source of heat shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) A certified family child-care home shall have:

(a) At least one (1) accessible and working telephone on each level used for child care while a child in care is present on that level; and

(b) A list of emergency numbers posted on each level used for child care or maintained in the contacts of each telephone, including numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care and rescue squad; and

4. Poison control center.

(9) Equipment and toys shall be:

(a) Designated by the manufacturer as developmentally appropriate to the age of children in care;

(b) In sufficient quantity for the number of children in care; and

(c) Safe, sound, clean, and in good repair.

(10) Stairs and steps used for children in care shall be:

(a) Solid;

(b) Safe; and

(c) Railed.

(11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

(a) Play; and

(b) Activities that meet the developmental needs of the children in care.

(13) An outdoor play area shall be free of unavoidable danger or risk.

(14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

(15) Outdoor stationary play equipment shall be:

(a) Securely anchored;

(b) Developmentally appropriate; and

(c) Safe.

(16) A trampoline shall not be accessible to a child in the care of a provider.

(17) Children in an outside play area shall have constant and active supervision and shall be protected by physical or natural barriers that prohibit access to:

(a) Traffic;

(b) Gullies; and

(c) Other hazards.

(18) Constant and active supervision shall be maintained around any body of water and shall be inaccessible to children by secured physical or natural barriers of adequate height and appropriately secured except in accordance with subsections (19) and (20) of this section.

(19) A swimming pool on the premises shall:

(a) Be maintained and free of debris and body waste;

(b) Have a water filtering system or be emptied daily;

(c) Be supervised when in use, with a ratio of one adult to one infant or toddler; and

(d) Be inaccessible to a child when not in use.

(20)[(18)] An above-ground pool shall ~~have~~:

- (a) ~~Have a~~ stationary wall no less than four (4) feet tall;~~and~~
- (b) ~~Have hand~~ holds or foot holds that are inaccessible when the pool is not in use; and
- (c) Be supervised when in use, with a ratio of one adult to one infant or toddler.

(21)[(19)] A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(22)[(20)] An earthquake drill, ~~and a~~ tornado drill, shelter-in-place drill, and lockdown drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented;~~;~~

(23) In the event of a natural disaster, fire, shelter-in-place, lockdown, or other emergency, a written plan shall be in place to communicate reunification with families and accommodations for:

- (a) Infants and toddlers;
- (b) Children with disabilities; and
- (c) Children with chronic medical conditions.

(24)[(21)] A family child-care home shall:

- (a) Be clean;
- (b) Be uncluttered;
- (c) Be free of insects and rodents;
- (d) Have a water supply that is:
 - 1. Potable;
 - 2. Adequate; and
 - 3. From an approved public water supply; and
- (e) Have bathrooms, including toilets, sinks, and potty chairs that are:
 - 1. Sanitary; and
 - 2. In good working condition.

(25)[(22)] Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.

(26)[(23)] Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.

(27)[(24)] Playpens and play yards shall:

- (a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 13. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

- (a) Two (2) hours daily;
- (b) The planned program activities; and

(c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall:

- (a) Wash hands with liquid soap and warm running water:
 - 1. Before and after eating or handling food;
 - 2. After toileting or diaper change;
 - 3. After handling animals;
 - 4. After touching an item or an area of the body soiled with body fluids or waste; and
- 5. After outdoor and indoor play time; or

(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) A provider and an assistant shall:

- (a) Wash hands with liquid soap and warm running water:
 - 1. Before and after diapering a child;
 - 2. Before and after feeding a child;
 - 3. After toileting or assisting a child with toileting;
 - 4. After handling animals;
 - 5. Before dispensing medication;

- 6. After caring for a sick child;
- 7. After wiping or blowing a child's or own nose; and
- 8. After smoking or vaping; or

(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash the provider or assistant's hands as soon as practicable once liquid soap and warm running water are available.

(6) A provider shall ensure that a child does not share:

- (a) Cups;
- (b) Eating utensils;
- (c) Wash cloths;
- (d) Towels; and
- (e) Toiletry items.

(7) An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(8) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(9) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

- 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
- 2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
- 3. No loose bedding, such as a bumper or a blanket; and
- 4. No toys or other items except for the infant's pacifier; or

(b) For a toddler or preschool-age child:

- 1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(10) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(11) A child who does not sleep shall be permitted to play quietly and be visually supervised.

(12) If overnight care is provided, a provider or an assistant shall:

- (a) Remain awake until every child in care is asleep; and
- (b) Sleep on the same floor level of the home as an infant or toddler.

(13) A certified family child care home shall provide a daily planned program:

(a) That is available to a parent of a child in care or the cabinet upon request;

(b) Of activities that are developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities, such as:

- 1. Art or music;
- 2. Math or numbers;
- 3. Dramatic play;
- 4. Stories and books;
- 5. Science or nature;
- 6. Block building or stacking;
- 7. Tactile or sensory activity;
- 8. Multi-cultural exposure;
- 9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in

respect to:

- (i) Clothing;
- (ii) Toileting;

- (iii) Hand-washing; and
- (iv) Eating.

(14) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(15) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(16) A provider shall ensure precautions are taken to prevent shaken baby syndrome, abusive head trauma, and child maltreatment.

(17)[(46)] A child shall be released from a family child-care home to:

- (a) The child's custodial parent;
- (b) The person designated in writing by the parent to receive the child; or
- (c) In an emergency, a person designated over the telephone by the parent.

(18) Waste and biological contaminants, such as bodily fluids, blood, or excretions, shall be:

- (a) Disposed of in a manner that prevents exposure to children;
- (b) Inaccessible to children; and
- (c) In a covered plastic-lined receptacle with a close-fitting lid.

Section 14. Toilet and Diapering Requirements. (1) A toilet room shall:

- (a) Have an adequate supply of toilet paper; and
- (b) Be cleaned and disinfected daily.
- (2) A sink shall be:
 - (a) Located near or in close proximity to toilets;
 - (b) Equipped with hot and cold running water that allows for hand washing;
 - (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
 - (d) Equipped with liquid soap and single use, disposable hand drying material;
 - (e) Equipped with an easily cleanable, covered waste receptacle; and
 - (f) Near or in close proximity to a changing area used for infants and toddlers.
- (3) Each toilet shall:
 - (a) Be kept in clean condition;
 - (b) Be kept in good repair;
 - (c) Be in a lighted room; and
 - (d) Have ventilation.
- (4) Toilet training shall be coordinated with the child's parent.
- (5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
- (6) If a toilet training chair is used, the chair shall be:
 - (a) Emptied promptly; and
 - (b) Disinfected after each use.
- (7) Diapers or clothing shall be:
 - (a) Changed when soiled or wet;
 - (b) Stored in a covered leak proof container temporarily; and
 - (c) Washed or disposed of at least once a day.
- (8) The proper methods of diapering and hand-washing shall be available at each diaper changing area.
- (9) If a child is being diapered, the child shall:
 - (a) Not be left unattended; and
 - (b) Be placed on a surface that is:
 - 1. Clean;
 - 2. Padded;
 - 3. Free of holes, rips, tears, or other damage;
 - 4. Nonabsorbent;
 - 5. Easily cleaned; and
 - 6. Free of items not used for diaper changing.
- (10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of a child.
- (11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.
- (12) If a provider or an assistant wear disposable gloves, the

gloves shall be changed and disposed of after each child is diapered.

Section 15. Food Requirements. (1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:
 - 1. Breast milk or iron-fortified formula to a child:
 - a. Age birth to twelve (12) months; or
 - b. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - 2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or
 - 3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.
- (2) Water shall be:
 - (a) Available to a child in care; and
 - (b) Served in addition to meal requirements if a child requests throughout the day.
- (3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (4) Second servings shall be available to a child.
- (5) Food shall not be:
 - (a) Used for:
 - 1. Reward; or
 - 2. Discipline; or
 - (b) Withheld until all other food items are consumed.
- (6) Meals shall:
 - (a) Be served in an amount appropriate to the age of the child;
 - (b) Include appropriate types of food according to the age of the child;
 - (c) Not be served during television or video viewing;
 - (d) Be served every two (2) to three (3) hours; and
 - (e) Be served to a child:
 - 1. Seated with sufficient room to manage food and tableware; and
 - 2. Supplied with individual eating utensils designed for use by a child.
- (7) Breakfast shall include:
 - (a) Milk;
 - (b) A whole grain or an enriched grain bread; and
 - (c) Fruit, vegetable, or 100 percent juice.
- (8) A snack shall include two (2) of the following:
 - (a) Milk;
 - (b) Protein source;
 - (c) Fruit, vegetable, or 100 percent juice; or
 - (d) A whole grain or an enriched grain bread.
- (9) Lunch and dinner shall include:
 - (a) Milk;
 - (b) Protein source;
 - (c) 1. Two (2) vegetables;
 - 2. Two (2) fruits; or
 - 3. One (1) fruit and one (1) vegetable; and
 - (d) A whole grain or an enriched grain bread.
- (10) A weekly menu shall be:
 - (a) Prepared;
 - (b) Dated;
 - (c) Available to a parent of a child in care or the cabinet upon request; and
 - (d) Kept on file for thirty (30) calendar days.
- (11) Substitutions to a weekly menu shall be noted on the day the meal is served.
- (12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.
- (13) Each child's bottle shall be:
 - (a) Labeled;
 - (b) Covered; and
 - (c) Refrigerated.
- (14) The refrigerator shall:

- (a) Be in working order; and
- (b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

- (a) Child shall be held; and
- (b) Bottle shall not be:
 1. Propped;
 2. Left in the mouth of a sleeping infant; or
 3. Heated in a microwave.

(17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 16. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

(a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;

(b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;

(c) An epinephrine auto-injector. A family child-care home shall comply with KRS 199.8951, including:

1. An epinephrine auto-injector shall be inaccessible to a child in care;

2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;

3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and

4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 20(10) of this administrative regulation if an epinephrine auto-injector is administered to a child; or

(d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.

(2) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a written request of the child's parent or the child's prescribing health professional; or

(b) In accordance with KRS 311.646.

(3) Prescription and nonprescription medications shall be:

(a) Labeled; and

(b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; ~~and~~

(b) Wash superficial wounds with soap and water before bandaging;

(c) Use disposable gloves for the clean-up of biological contaminants, such as blood, bodily fluids, or excretions;

(d) Place contaminated clothing or other absorbent materials in a sealed plastic container or bag labeled with the child's name, and returned to the parent; and

(e) Clean and disinfect the soiled surfaces.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

- (a) Adhesive bandages;
 - (b) Sterile gauze;
 - (c) Medical tape;
 - (d) Scissors;
 - (e) Thermometer;
 - (f) Disposable gloves; and
 - (g) CPR mouthpiece.
- (6) A provider shall provide immediate notification of a medical

emergency to a child's:

(a) Parent; or

(b) Emergency contact, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid; and

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 17. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 18. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;

2. Remain seated while the vehicle is in motion; and

3. If under thirteen (13) years of age, be transported in the back seat;

(d) Have emergency and identification information about each child in the vehicle if children are being transported; and

(e) Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 20(10)(a) of this administrative regulation; or

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 19. Records. (1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.034[214.036];

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. Food or other allergies in a documented care plan that includes:

(i) Instructions regarding the allergy, including any identifying symptoms;

(ii) Steps taken to avoid and prevent the allergen; and

(iii) A plan of treatment in the event of an allergic reaction, including medication, doses, and the administration of an epinephrine auto-injector in accordance with Section 16(1)(c).

e. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

f. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

g. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

h. A permission form and allergy care plan if applicable for each trip away from the family child-care home signed by the child's parent in accordance with Section 18(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14, if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030; and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030.

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills, ~~and~~-tornado drills, shelter-in-place drills, and lockdown drills~~[drills]~~ detailing the date,

time, and participants in accordance with Section 12~~(22)~~~~[(20)]~~ of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 12~~(21)~~~~[(49)]~~ of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 20~~(11)~~~~[(40)]~~ of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;

2. Is optional for an applicant or a family child-care home's use; and

3. Is available to an applicant or a family child-care home without charge.

Section 20. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

(a) Rate for child care;

(b) Expected frequency of payment for the program;

(c) Hours of operation; and

(d) Policy regarding:

1. Late fees;

2. Holidays;

3. Vacation;

4. Illness; and

5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Post each child's food allergies or other allergy care plan prominently where food is served with permission of the parent or guardian;

(6) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(7)~~[(6)]~~ Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(8)~~[(7)]~~ Make available to a parent upon request:

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(9)~~[(8)]~~ Coordinate at least one (1) annual activity involving parental or family participation;

(10)~~[(9)]~~ Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(11)~~[(40)]~~ Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease pursuant to 902 KAR 2:020, which shall also be reported to the local health department~~[pursuant to KRS 214.040];~~

2. An accident or injury to a child that requires medical care;
3. An incident that results in legal action by or against the family child-care home that:
 - a. Affects:
 - (i) A child in care;
 - (ii) The provider;
 - (iii) An assistant; or
 - (iv) A member of the provider's household; or
 - b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;
4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or
5. A report of child abuse or neglect that:
 - a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and
 - b. Names the alleged perpetrator as the:
 - (i) Provider;
 - (ii) Provider's assistant; or
 - (iii) Member of the provider's household;
 - (b) The death of a child to the cabinet within one (1) hour;
 - (c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or
 - (d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 11/2023[8/2018];
- (b) "OIG-DRCC-04, Certified Family Child-Care Home Renewal Form", 11/2023[8/2018]; and
- (c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 25, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 502-564-7476; 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 standards for a certified family child-care home.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.
 - (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 standards for certification as a family child-care home.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment addresses non-compliance issues identified during a recent federal monitoring visit. The necessary amendments are requirements associated with the Child Care and Development Fund (CCDF). The amendment adds requirements for the identification of and protection from vehicular traffic in accordance with 45 C.F.R. 98.41(a)(1)(v); shaken baby syndrome, head trauma, and child maltreatment prevention training in accordance with 45 C.F.R. 98.41(a)(1)(vi); emergency and response planning in accordance with 45 C.F.R. 98.41(a)(1)(vii); handling and storage of hazardous materials and biocontaminants disposal in accordance with 45 C.F.R. 98.41(a)(1)(viii); pediatric first aid and CPR in accordance with 45 C.F.R. 98.41(a)(1)(x); pre-service/orientation training for providers in accordance with 45 C.F.R. 98.44(b)(1) that addresses all required health and safety topics; and completion of ongoing training requirements for substitutes and assistants per 45 C.F.R. 98.44(b)(2). The administrative regulation also aligns training requirements to match timelines for licensed child-care staff. The initial certification application form and the certification renewal form are being amended to request information related to additional employment an applicant may have and if the address provided is the applicant's primary residence. Material incorporated by reference is being amended to request information related to additional employment and the applicant's address.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address federal non-compliance issues mentioned above and to avoid federal financial penalties.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the Child Care and Development Fund (CCDF) Program, 45 C.F.R. Part 98.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure Kentucky is meeting federal requirements addressed in a non-compliance letter received as a result of a federal monitoring visit.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 206 certified family child-care homes in Kentucky affected by this administrative regulation. The Cabinet for Health and Family Services, Office of the Inspector General and Department for Community Based Services are affected through the regulation and monitoring of this program.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does contain additional requirements related to preventing dangers to children in care that are federally required. Additional training and requirements will have to be met.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers will need to take additional training to come into compliance. Providers will need either physical or natural barriers for the protection from vehicular traffic in accordance with 45 C.F.R. 98.41(a)(1)(v).

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

Applicants and certified child-care providers and the children in their care will benefit from the improved health and safety measures.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort funds for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858r

(2) State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

(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, Department for Community Based Services and Office of Inspector General, are impacted by this administrative regulation through administering and monitoring 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), 199.8982(1)(f), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858r

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to

this administrative regulation will not generate 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 not generate revenue in the subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No savings will be generated by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings are anticipated from this amendment.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities in the first year, unless certified child-care providers have to spend additional monies to protect children from vehicular traffic and bodies of water.

(d) How much will it cost the regulated entities for subsequent years? There are no ongoing costs to affected 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)]. No major economic impact is anticipated.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

922 KAR 2:165. Employee Child Care Assistance Partnership.

RELATES TO: KRS 199.881-888, 199.8943, 42 U.S.C. 2000d
STATUTORY AUTHORITY: KRS 194A.050(1), 199.884, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888. KRS 199.8994 requires the cabinet to administer all child care funds in a manner that is in the best interest of the clients to be served. This administrative regulation establishes eligibility requirements and procedures for the implementation of the Employee Child Care Assistance Partnership to the extent that funding is available.

Section 1. Definitions.

(1) "Applicant" means an employer applying for the Employee Child Care Assistance Partnership (ECCAP) program with the intention of entering into a contract with an employee and a child care provider to support an employee by contributing to his or her child care costs.

(2) "Cabinet" is defined by KRS 199.882(1).

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent or guardian's responsibility for the child's protection, development, and supervision.

(4) "Child care desert" means a census tract with more than fifty (50) children under the age of five (5) that contains either no child care providers or so few that there are more than three (3) times as many children as licensed child care slots.

(5) "Contribution" is defined by KRS 199.882(3).

(6) "Eligible child care costs" is defined by KRS 199.882(4).

(7) "Employee" is defined by KRS 199.882(5).

(8) "Employer" is defined by KRS 199.882(6).

(9) "Family" means a parent, child, or other responsible adult residing in the same home as a child.

(10) "Fund" is defined by KRS 199.882(7).

(11) "Program" means the Employee Child Care Assistance Partnership and is defined by KRS 199.882(8).

(12) "Responsible adult" means an individual who is:

(a) The natural parent, adoptive parent, or stepparent;

(b) The legal guardian of a child; or

(c) The spouse of an individual caring for a child in loco parentis.

(13) "Small business" is defined by KRS 199.882(9).

(14) "State match" is defined by KRS 199.882(10).

(15) "State median household income" is defined by KRS 199.882(11).

Section 2. Application and Contract Requirements and Timeframes.

(1) An employer may apply for the Employee Child Care Assistance Partnership (ECCAP).

(2) An application shall have been made on the date a signed and completed form "DCC-600, Employee Child Care Assistance Partnership Application and Contract", is received by the cabinet.

(3) An application shall not be received by the cabinet prior to April 2, 2023, in accordance with KRS 199.883(9)(b).

(4) The cabinet shall review and consider an application received on or after April 2, 2023, pursuant to KRS 199.883(3) through (5).

(5) The cabinet shall not disburse a state match pursuant to this program prior to July 1, 2023, in accordance with KRS 199.883(9)(c).

(6) If necessary, the cabinet shall maintain a waitlist pursuant to KRS 199.883(6).

(7) Pursuant to KRS 199.883(10), if funding is available, beginning in 2024, the cabinet shall accept an application for the next fiscal year on:

(a) April 2 of each year for an employer already participating in the program.

(b) May 17 of each year for an employer not already participating in the program.

(8)

(a) In accordance with the procedures established in 920 KAR 1:070, interpreter or speech impaired services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(b) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(9) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex or gender, sexual orientation, disability, religion, national origin or ancestry, political beliefs, or reprisal or retaliation for prior civil rights activity.

(10)

(a) The employer shall be the primary source of information and

shall:

1. Provide verification of:

a. Employment;

b. The employee's income; and

c. Technical eligibility required pursuant to Section 3 of this administrative regulation; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information, failure of an employer to respond within ten (10) business days shall be considered a failure to present adequate proof of eligibility.

(11) The cabinet shall verify that the employer, employee, and child care provider are eligible to participate in the program pursuant to the requirements established in this administrative regulation.

(12) The cabinet shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with KRS 199.884(4), send notice of approval or denial to all parties on the "DCC-605, Employee Child Care Assistance Partnership Notice of Action".

Section 3. Technical Eligibility.

(1) An employee shall not be eligible to participate in the program if child care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A person living in the same residence as the child in need of care; or

(d) A provider not:

1. a. Licensed pursuant to 922 KAR 2:090; or

b. Certified pursuant to 922 KAR 2:100; and

2. Rated pursuant to the quality-based graduated early care and education program established in KRS 199.8943 and 922 KAR 2:270.

(2) An employee whose family meets the eligibility requirements for the Child Care Assistance Program pursuant to 922 KAR 2:160 shall be referred to that program by the cabinet.

(3) An employee shall not be eligible to participate in the Employee Child Care Assistance Partnership program if a member of his or her family is eligible for the Child Care Assistance Program pursuant to 922 KAR 2:160.

(4) An employee shall be a member of the family of the child for whom child care is being provided and paid for.

(5) A licensed or certified child care provider shall be eligible to apply for this program as an employer.

(6) The owner of a child care facility shall not be eligible to participate as an employee.

(7) An individual shall not be eligible to apply as more than one (1) party to a contract.

Section 4. Priority Determinations.

(1) The cabinet shall review and consider applications in the order in which they are received.

(2) In each fiscal year, twenty-five (25) percent of the total fund shall be set aside to fund applications in which the employer is a small business.

(3) The cabinet shall prioritize approving applications in which:

(a) The employer is located in a child care desert; ~~or~~

(b) The employer shall contribute at least thirty-three (33) percent of the eligible child care costs; or

(c) The employee resides in Kentucky.

Section 5. Continuing Participation.

(1) Each approved contract shall remain in place for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(2) An employer with an approved contract in place shall reapply to continue participation each year pursuant to KRS 199.883(10)(a).

Section 6. ~~Payment~~[Payments] Rates.

(1) To the extent funds are available, the cabinet shall make payments to the child care provider based on the start and end date of enrollment of each child identified in the DCC-600.

(2) Except as provided in subsection (3) of this section, the state match to the contribution provided by the employer shall be in accordance with the following tiered table of an employee's household income pursuant to KRS 199.885(7):

Employee Household Income Compared to State Median Household Income	State Match Percentage
Equal to or less than 100%	100%
Above 100% through 120%	90%
Above 120% through 140%	80%
Above 140% through 160%	70%
Above 160% through 180%	60%
Above 180%	50%

(3) The state match provided shall not exceed the balance necessary to pay for child care in full.

(4) The state match provided shall remain unchanged for the approved fiscal year unless the contract is terminated pursuant to Section 7 of this administrative regulation.

(5) A child care provider shall not charge a rate for a program participant that is different from that charged to the general public.

Section 7. Termination of Contract.

(1) The contract shall be terminated if:

- (a) Employment is terminated pursuant KRS 199.887(1)(a);
- (b) An employer fails to make the agreed upon contribution towards child care pursuant KRS 199.887(1)(b);
- (c) An employee fails to pay remaining child care costs and the child care provider requests the cabinet terminate the contract;
- (d) A child care provider ceases participating in the program;
- (e) A child care provider no longer participates in the quality rating system established in KRS 199.8943 and 922 KAR 2:270; or
- (f) An employer, [or] employee, or child care provider requests the contract be terminated by the cabinet at any time for any reason pursuant KRS 199.887(2)(c).

(2) If employment is terminated, the employer shall notify the child care provider and cabinet within three (3) business days.

(3) If an employer fails to make the agreed upon contribution, the child care provider shall notify the cabinet within five (5) business days.

(4) If a child care provider ceases participation in the program or no longer participates in the quality rating system, the provider shall notify all parties to the agreement immediately.

(5) If an employer, [or] employee, or child care provider requests a contract be terminated by the cabinet, he or she shall notify all parties to the contract and specify the desired termination date that shall occur no less than two (2) weeks from the date of notice.

(6) If a party to the contract fails to meet the notice requirements of this section, reimbursement shall be made in accordance with KRS 199.887.

(7) All parties to a contract shall be financially obligated up to the date of termination of the contract.

(8) The cabinet shall notify all parties of a termination of contract on the DCC-605.

Section 8. Appeals. An employer, employee, or child care provider may request an administrative hearing regarding an eligibility or payment determination within thirty (30) days of adverse action from the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 East Main Street, 2 E-O, Frankfort, Kentucky 40621.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DCC-600, Employee Child Care Assistance Partnership Application and Contract", 11/23[09/22]; and
- (b) "DCC-605, Employee Child Care Assistance Partnership Notice of Action", 11/23[01/23].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 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: October 27, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 502-564-7476; 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 Employee Child Care Assistance Partnership (ECCAP) program. This administrative regulation establishes the processes, requirements, and eligibility relating to the program to the extent that funding is available, pursuant to KRS 199.881 to 199.888.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the required actions of a program applicant and participant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.884 requires the cabinet to promulgate administrative regulations to effectuate the provisions of KRS 199.881 to 199.888, the Employee Child Care Assistance Partnership.

(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 required processes, eligibility, and assistance amounts consistent with KRS 199.881 to 199.888.

(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 an employee residing in Kentucky as one of the priority criteria for participation in the program and clarifies that child care providers may terminate the contract as well, pursuant to House Bill 165 from the 2023 Regular Session, codified as KRS 199.887. Materials incorporated by administrative regulation, program forms, are also being amended for ease of use, to make clarifications, to reflect that more than one child care provider may be involved in each contract, and to adjust for electronic utilization in the future.

(b) The necessity of the amendment to this administrative regulation: House Bill 165 from the 2023 Regular Session of the General Assembly amended KRS 199.887 to specify that in addition to the employer and employee, a child care provider also had the authority to terminate a contract established through this program at any time. This has been reflected in Section 7 of the administrative

regulation. Clarification was also necessary just for continued operation of the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 199.887, amended in the 2023 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the required processes, eligibility, and assistance amounts consistent with KRS 199.881 to 199.888.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2023, there were 1,782 licensed child care providers and 205 certified child care providers. Of these, 1,765 participated in the All STARS rating system, which is required for participation in this program. Also, as of September 2023, there were 83 families (115 children) participating in the program. This is the first year of operation of the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements in this amendment. The amendment clarifies that child care providers may also terminate the contract, consistent with state 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 cost associated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participating entities have greater flexibility to modify or terminate the contract.

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

(a) Initially: There are no costs associated with the amendment.

(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: The Executive Branch budget bill from the 2022 Regular Session, House Bill 1, appropriated \$15,000,000 for the operation of this program in fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter.

(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 fees.

(9) TIERING: Is tiering applied? The amount of state match contributed towards an employee's child care cost is based upon the employee's household income and is tiered consistent with state law.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services administers this program. Government entities are not an allowed employer pursuant to KRS 199.882.

(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), 199.884, 199.8994.

(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 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 administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This program is funded by General Funds appropriated by the General Assembly. The Executive Branch budget bill from the 2022 Regular Session, House Bill 1, appropriated \$15,000,000 to this program for fiscal year 2023-2024. KRS 199.885(9) includes that five percent (5%) of the total fund shall be distributed to the cabinet to administer the program in fiscal year 2022-2023 and three percent (3%) of the total fund shall be distributed to the cabinet to administer the program in every fiscal year thereafter. House Bill 1 G.8.(30) included a seven percent (7%) cap on administrative costs for the oversight of this program.

(d) How much will it cost to administer this program for subsequent years? This program will be administered within appropriated funding. In the absence of funding, this program will not continue.

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 regulated entities, but does provide financial assistance available to eligible families towards their child care costs.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation creates child care cost savings for families employed by an employer who participates.

(c) How much will it cost the regulated entities for the first year? There are no required costs. Employers determine how much funding to contribute towards their employee's child care costs.

(d) How much will it cost the regulated entities for subsequent years? There are no required costs. Employers determine how much funding to contribute towards their employee's child care 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 administrative regulation does not have a major economic impact in an overall negative or adverse manner.

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](#).

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Repealer)

301 KAR 4:021. Repeal of 301 KAR 4:020 and 301 KAR 4:050.

RELATES TO: KRS 150.025, 150.600

STATUTORY AUTHORITY: 150.025(1), 150.600 (1), 50 C.F.R. 20, 21.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. It also authorizes the department to make administrative regulations which apply to a limited area or to the entire state. KRS 150.600 (1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21. 301 KAR 4:020 and 301 KAR 4:050 are being repealed because the requirements have been incorporated into 301 KAR 2:222.

Section 1. The following administrative regulations are hereby repealed:

(1) 301 KAR 4:020, Ballard Wildlife Management Area; and

(2) 301 KAR 4:050, Swan Lake Unit of Boatwright Wildlife Management Area.

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2024, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: These administrative regulations established restrictions for entry and activities within Ballard Wildlife Management Area and the Swan Lake Unit of Boatwright Wildlife Management Area.

(b) The necessity of this administrative regulation: The necessity of these administrative regulations are to establish the prohibited activities specific to Ballard Wildlife Management Area and the Swan Lake Unit of Boatwright Wildlife Management Area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(g) grants authority for the Department of Fish and Wildlife Resources to establish

administrative regulations that apply to a limited area or to the entire state; and 150.600 grants authority for the Department of Fish and Wildlife Resources to establish waterfowl refuges and waterfowl shooting grounds and to do anything else necessary to control or improve the conservation or hunting of waterfowl not contrary to federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These regulations assist in preparing the respective wildlife management areas for waterfowl hunting and promoting successful hunts.

(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 regulations will be repealed.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary as the amendments to 301 KAR 2:222 include the necessary portions of these regulations thus making them redundant.

(c) How the amendment conforms to the content of the authorizing statutes: The necessary portions of these regulations for conformity with the authorizing statutes have been included in recent amendments to 301 KAR 2:222.

(d) How the amendment will assist in the effective administration of the statutes: The repeal of these regulations and the inclusion of their subject matter into 301 KAR 2:222 shall consolidate the requirements for waterfowl hunting on public lands into one location.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no additional actions required to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have fewer administrative regulations to understand and comply with.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(g), 150.600.

(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? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for the regulated entities in the first full year of this administrative regulation is in effect.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for the regulated entities in subsequent years this administrative regulation is in effect.

(c) How much will it cost the regulated entities for the first year? There will be no cost for the regulated entities in the first full year of this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for the regulated entities in subsequent years this administrative regulation is in effect.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

GENERAL GOVERNMENT
Department of Agriculture
Office of the Commissioner
(New Administrative Regulation)

302 KAR 2:010. Access to public records of the Kentucky Department of Agriculture.

RELATES TO: KRS 61.870-61.884

STATUTORY AUTHORITY: KRS 61.876

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.876 requires that each public agency shall adopt rules and administrative regulations to provide full access to public records, to protect public records from damage and disorganization, to prevent excess disruption of its essential functions, to provide assistance and information upon request, and to ensure efficient and timely action in response to application for inspection of public records. This administrative regulation proposes to fulfill this statutory requirement.

Section 1. The principal office location for the Kentucky Department of Agriculture is 105 Corporate Drive, Frankfort, Kentucky 40601. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky.

Section 2. The title of the official custodian of the records of the Kentucky Department of Agriculture is the Commissioner of Agriculture whose address is 105 Corporate Drive, Frankfort, Kentucky 40601 and phone number 502-573-0282. The email address for the official custodian of records is ag.web@ky.gov.

Section 3. The procedure to be followed in requesting copies of public records shall be as follows:

(1) Requests for copies of public records shall be made in writing, describing in reasonably sufficient detail the records to be inspected using form OAG-01.

(2) Fees to be charged for copies of public records shall be ten (10) cents for each photocopy or page produced and sent electronically.

(3) Fees shall be paid prior to mailing the results of the request.

Section 4. The procedure to be followed in requesting inspection of public records shall be as follows:

(1) Requests for inspection of public records shall be made directly to the Commissioner of Agriculture or to the Commissioner's designee;

(2) Requests to inspect public records shall be made in writing, describing in reasonably sufficient detail the records to be inspected using form OAG-01;

(3) Records shall be inspected and copied in the presence of a member of the Kentucky Department of Agriculture to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person requesting inspection, and to provide full access to public records; and

(4) Suitable facilities shall be made available for inspection of public records.

Section 5. A copy of KRS 61.870 to 61.884 and this administrative regulation shall be displayed in the main reception room of the Kentucky Department of Agriculture at 105 Corporate Drive, Frankfort, Kentucky 40601.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference: "Request to Inspect Public Records OAG-01", June 2021.

(2) This material 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.

(3) This material may also be obtained at www.kyagr.com.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2024 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2024. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation satisfies the statutory requirements of KRS 61.876.

(b) The necessity of this administrative regulation: This regulation satisfies the statutory requirements of KRS 61.876.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory requirements of KRS 61.876 by providing the required information required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities the KDA open records process.

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

(a) How the amendment will change this existing administrative regulation: This 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: The KDA and any potential requester of information.

(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 person requesting inspection or copies of records will need to follow the steps in the filing to obtain the information requested.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ten cents a page for copies for the requester. KDA costs would vary based on workload.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A requester may obtain information in a timely manner.

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

(a) Initially: The KDA cannot estimate as it is contingent on requests.

(b) On a continuing basis: The KDA cannot estimate as it is contingent on requests.

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

implementation and enforcement of this administrative regulation: KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A fee is established per page for copies made by the KDA.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A fee is established directly.

(9) TIERING: Is tiering applied? No, all entities are 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? The KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.876

(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 KDA cannot estimate revenue as it is based on possible future requests.

(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 KDA cannot estimate revenue as it is based on possible future requests.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is minimal based on historic request levels.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this regulation is minimal based on historic request levels.

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 for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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

Cost Savings (+/-):

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)] Fees will not exceed the major economic impact threshold.

**GENERAL GOVERNMENT
Department of Agriculture
Office of the Commissioner
(New Administrative Regulation)**

302 KAR 16:150. Qualification and registration of persons designated to perform amusement safety inspections.

RELATES TO: KRS 247.234

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)(e) requires the Department of Agriculture to promulgate administrative regulations for designating persons qualified by education or experience, who are capable of determining amusement safety in accordance with administrative regulations promulgated under KRS 247.232 to 247.236, as amusement safety inspectors. The Department of Agriculture shall establish an annual registration fee for persons designated as amusement safety inspectors.

Section 1. Education or experience requirements for persons designated as amusement safety inspectors.

(1) Persons employed by the department shall possess the following education or experience to be designated as amusement safety inspectors:

(a) NAARSO Certificate Level I;

(b) AIMS International Level I Certification, Associate Ride Inspector; or

(c) No education or experience, if the department employee is in training or the inspection performed is supervised by a department employee holding a level of education or experience listed in parts (a) or (b) of this subsection.

(2) Persons working under a contract with the department to provide amusement inspection services to the department shall possess the following education or experience to be designated as amusement safety inspectors:

(a) NAARSO Certificate Level I; or

(b) AIMS International Level I Certification, Associate Ride Inspector.

(3) Regardless of their level of education or experience, persons other than those employed by the department or providing amusement inspection services to the department under contract shall not be designated by the department as amusement safety inspectors for any purpose contained in KRS 247.232 to 247.236 and any administrative regulation pertaining to those sections.

Section 2. Any person who is designated as an amusement safety inspector, not employed by the KDA, shall register with the department and pay an annual registration fee in the following manner:

Persons designated as amusement safety inspectors shall:

(1) Provide proof of education and experience required to be designated as an amusement safety inspector;

(2) Provide proof of current insurance coverage during the designation period as follows:

(a) Current and general liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and

(b) Current professional liability coverage, including errors and omissions, in an amount of not less than \$1,000,000; and

(3) Pay a registration fee of \$100.

Section 3. Incorporation by Reference.

(1) "Amusement Safety Inspector Registration Form", 11/23, is incorporated by reference.

(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.

(3) This material may also be obtained at www.kyagr.com.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: November 14, 2023

FILED WITH LRC: November 15, 2023 at 11:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2024 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2024. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation satisfies the statutory requirements of KRS 247.234 regarding pre-opening inspections by KDA contractors.

(b) The necessity of this administrative regulation: This regulation satisfies the statutory requirements of KRS 247.234 by establishing rules for KDA contractors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory requirements of KRS 247.234 by establishing rules for KDA contractors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities the KDA rules for KDA contractors.

(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: The KDA and two current KDA contractors, and others that may be interested in registering.

(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 person requesting registration will need to follow the steps in the filing to obtain a designation as an amusement ride inspector.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 100 Dollars for registration per the statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A requester obtain a designation as an amusement ride inspector.

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

(a) Initially: The KDA estimates less than a work day of costs by office staff. Cost for contractor inspectors was: FY2022 \$27,669.80, FY2023 \$32,055.60.

(b) On a continuing basis: The KDA cannot estimate as it is

contingent on requests, but does not anticipate a dramatic increase in review workload.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDA general fund and inspection fees paid by amusement companies.

(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 fee is proscribed by statute and the KDA does not anticipate any need for an increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A fee is established directly by statute and created in this filing.

(9) TIERING: Is tiering applied? No, all entities are 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? The KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.234

(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 KDA cannot estimate revenue as it is based on possible future requests, but would guess less than \$1,000 in the near term.

(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 KDA cannot estimate revenue as it is based on possible future requests.

(c) How much will it cost to administer this program for the first year? The KDA estimates less than a work day of costs by office staff. Cost for contractor inspectors was: FY2022 \$27,669.80, FY2023 \$32,055.60.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate as it is contingent on requests, but does not anticipate a dramatic increase in review workload.

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 for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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

Cost Savings (+/-):

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)] Fees will not exceed the major economic impact threshold.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Substance Use Disorder (New Administrative Regulation)

908 KAR 1:410. Recovery housing.

RELATES TO: 26 U.S.C. 501(c), 42 U.S.C. 3607, 12187

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450, 222.211, 222.500-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 222.504(3) allows for the promulgation of administrative regulations governing recovery housing certification. This administrative regulation establishes the standards and requirements for recovery housing certification.

Section 1. Definitions. (1) "Applicant" means the owner, operator, or agency that submits an application for the certification of a recovery residence.

(2) "Cabinet" is defined by KRS 222.500(1).

(3) "Certified recovery residence" means a recovery residence that has met the required standards recognized and approved by the Cabinet for Health and Family Services.

(4) "Certifying organization" is defined by KRS 222.500(2).

(5) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(6) "Kentucky Recovery Housing Network" means the organization recognized by the National Alliance for Recovery Residences (NARR) as the state affiliate.

(7) "Local government" is defined by KRS 222.500 (3).

(8) "National Alliance for Recovery Residence Standards" or "NARR standards" means a set of published national standards for all levels of recovery residences and is available on the NARR Web site at <https://narronline.org/affiliate-services/standards-and-certification-program/>.

(9) "Recovery residence" is defined by KRS 222.500(5).

(10) "Recovery support services" is defined by KRS 222.500(6).

Section 2. Application Process for Certification of Recovery Residences.

(1) Entities required by KRS 222.502 to obtain certification as a recovery residence shall submit:

(a) A "Recovery Housing Certification Application" that includes full, complete, and accurate information for each residence;

(b) A completed "Recovery Housing Assurances" for each residence;

(c) A signed "Recovery Housing Code of Ethics";

(d) A signed, notarized statement granting permission by the property owner of record, if other than the applicant, to operate a recovery residence on the owner's property;

(e) Proof of fire, liability, and hazard insurance coverage on the building in which the residence is located;

(f) Proof of current inspections for:

1. Health and safety;

2. Building and occupancy;

3. Fire codes; and

4. Zoning requirements;

(g) Proof of current registration with the Kentucky Secretary of State;

- (h) A copy of resident program policies that include:
 1. Terms of occupancy;
 2. Financial obligations, including any fees, charges, or rents that may accrue to the resident and the process, time frame, and requirements for the collection of such obligations;
 3. Financial deposits that may be collected, if any, and the time frame process, and requirements for the return of such deposits; and
 4. Any circumstances under which the resident may be entitled to a refund of any amount for financial obligations collected by the recovery residence, if applicable;
- (i) A copy of the emergency preparedness plan for the recovery house, that includes:
 1. Emergency contact numbers;
 2. An evacuation plan and map;
 3. An emergency relocation plan that specifies where residents may live temporarily; and
 4. A continuity of operations plan; and
- (j) If applicable, any forms, documents, and guides used to mentor each resident or monitor each resident's participation in the development of the resident's recovery plan;
- (2) If an application is incomplete or inaccurate, the certifying organization:
 - (a) Shall return the application within ten (10) business days to the applicant with written instructions regarding proper completion and resubmission of the application within a specified time frame; and
 - (b) May conduct, or delegate a designee to conduct, a pre-inspection site visit.
- (3) The cabinet, certifying organization, or its designee may conduct an inspection of the residence at any time without prior notice, including inspecting and copying financial and resident records.
- (4) Required entities as established by KRS 222.502 shall submit a "Kentucky Recovery Housing Application" with the required supporting documentation identified in Section 2(1) to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Kentucky Recovery Housing Certification Program via electronic mail to kyrecoveryhousing@ky.gov.

Section 3. Approval or Denial of the Application for Recovery Residence Certification.

- (1) The certifying organization shall conduct a site visit after the completed application and required documentation is received to determine if the application for certification for a recovery residence is:
 - (a) Approved;
 - (b) Provisionally approved; or
 - (c) Denied.
- (2) The certifying organization shall grant approval for certification for a period of twelve (12) months if the applicant is in compliance with the "NARR standards"; or
- (3) The certifying organization may grant provisional approval of the application for initial certification of a recovery residence in the following circumstances:
 - (a) The certifying organization has identified deficiencies with respect to specific NARR standards; and
 - (b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or
- (4) The certifying organization shall deny the application for certification of a recovery residence in the following circumstances:
 - (a) The applicant is in noncompliance with the NARR standards;
 - (b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or
 - (c) Information contained on the application reveals that there would be an unreasonable risk of harm to the residents if certification were granted; or
- (5) The certifying organization may deny the application for certification of a recovery residence if the applicant has previously discontinued operations of a recovery residence without prior notification to staff, residents, and the certifying organization, and without implementation of a transition plan for residents to alternative living arrangements.
- (6) If provisional approval is granted, it shall:
 - (a) Be for a period of six (6) months from the date of the issuance of the provisional approval;
 - (b) Require the entity to request the certifying organization to conduct a site visit for reconsideration of certification prior to the expiration of the provisional approval; and
 - (c) Require the entity to submit documentation that demonstrates that the identified deficiencies have been eliminated.
- (7)(a) Provisional approval may be granted two consecutive times, for a maximum of twelve (12) months, at that time the application for certification shall be denied; and
- (b) The entity shall wait twelve (12) months from the date of denial before a new application may be submitted.
- (8) Certification, if granted, shall be valid for the residence and address for which the original certification is issued.
- (9) Recovery residence certification is not transferable, if the sale or transfer of a recovery residence causes a change in ownership, the new owner must apply for certification as established in Section 2 of this administrative regulation.

- (a) Be for a period of six (6) months from the date of the issuance of the provisional approval;
- (b) Require the entity to request the certifying organization to conduct a site visit for reconsideration of certification prior to the expiration of the provisional approval; and
- (c) Require the entity to submit documentation that demonstrates that the identified deficiencies have been eliminated.
- (7)(a) Provisional approval may be granted two consecutive times, for a maximum of twelve (12) months, at that time the application for certification shall be denied; and
- (b) The entity shall wait twelve (12) months from the date of denial before a new application may be submitted.
- (8) Certification, if granted, shall be valid for the residence and address for which the original certification is issued.
- (9) Recovery residence certification is not transferable, if the sale or transfer of a recovery residence causes a change in ownership, the new owner must apply for certification as established in Section 2 of this administrative regulation.

Section 4. Recertification. (1) An entity that has been granted certification as a recovery residence, shall submit an application for recertification to the certifying organization at least sixty (60) days prior to the expiration date of the current certification.

- (2) The certifying organization shall conduct a site visit as part of the recertification process.
- (3)(a) Recertification shall be granted if the applicant is currently certified and is in compliance with the NARR standards; or
- (b) Subsequent to the issuance of provisional recovery residence certification, the identified deficiencies on the basis of which the provisional certification was granted have been fully and satisfactorily remediated;
- (4) Provisional approval shall be granted of the application for recertification of a recovery residence if:
 - (a) The certifying organization has identified deficiencies with respect to specific NARR standards; and
 - (b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or
- (5) If provisional approval is granted during recertification, it shall be granted once and for a period not to exceed six (6) months.
- (6) An application for recertification shall be denied in the following circumstances:
 - (a) The applicant is in noncompliance with the NARR standards;
 - (b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or
 - (c) The application reveals that there would be an unreasonable risk of harm to the residents if certification were granted.
- (7) If the applicant has discontinued operations of a recovery residence without complying with the provisions of this administrative regulation an application for recertification may be denied.
- (8) If the certifying organization does not conduct a site visit before the expiration of certification, the certifying organization shall issue a written notification to the owner or operator of the recovery residence that extends certification until the certifying organization is able to conduct a site visit of the recovery residence.
- (9) The certifying organization shall notify the department of the organizations determination of an application for certification within ten (10) business days from the date of notification to the applicant.

Section 5. Department Responsibilities. (1) The department shall:

- (a) Require certified recovery residences to provide proof of certification at least annually;
- (b) Require certified recovery residences to notify the department of any change in their certification status by a certifying organization;
- (c) Require separate proof of certification for each recovery residence owned or operated by an individual or entity in the commonwealth;
- (d) Post on its Web site the name, telephone number, and location by local jurisdiction of each certified recovery residence and shall update the list at least quarterly;
- (e) Post on its Web site the name of each certifying organization

approved by the cabinet; and

(f) Notify local governments with appropriate jurisdiction of receipt of proof of certification from a recovery residence within thirty (30) days of receipt of proof of certification.

(2) The department may seek legal action, up to and including cessation of operations and monetary penalties, against a recovery residence that fails to meet the requirements of this administrative regulation.

(3) The department shall not disclose the address of a recovery residence except to local governments, local law enforcement, and emergency personnel.

Section 6. Recovery Residence Owner or Operator Responsibilities. The owner or operator of a certified recovery residence shall ensure the following:

(1) The residence and its operations are in compliance with the NARR standards;

(2) The residence shall develop and adhere to a written policy regarding the criminal history, including substantiated abuse or neglect of a child or vulnerable adult, of any staff member, employee, peer, or volunteer who serves in a staff capacity with the recovery residence and, in that capacity, has direct and regular interaction with residents;

(3) If the certified recovery residence plans to discontinue operations, the owner or operator shall submit, at least sixty (60) calendar days before the residence intends to cease operations, to the certifying organization, a written plan that includes the following information:

(a) Date operations will cease; and

(b) Notification to residents of the planned discontinuation of operations and of other certified recovery residences and housing options.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Recovery Housing Assurances", 07/24;

(b) "Kentucky Recovery Housing Certification Application", 07/24;

(c) "Kentucky Recovery Housing Code of Ethics", 07/24; and

(d) "NARR Standard 3.0", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

(3) This material is also available at <https://narronline.org/affiliate-services/standards-and-certification-program/>.

KATHERINE R. MARKS, Ph. D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 6, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 502-564-7476; 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 requirements and standards for the administration of recovery housing certification.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements and standards for the administration of recovery housing certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 establishing the requirements and standards for the administration of recovery housing certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 by establishing the standards and requirements for the certification of recovery housing.

(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 October 18, 2023, there are currently 71 certified recovery residences with a total of 1,070 available beds for residents. There are 82 pending applications for recovery housing certification with another potential 906 beds available to residents. All of the applications for recovery housing certification have been submitted by 44 unique applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to meet the criteria established in the statute and submit the required application and supporting documentation required to meet the standards established to be certified as a recovery residence.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will experience certification and an increased opportunity for funding for programming designed for individuals who experience substance use disorder and are in recovery.

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

(a) Initially: The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$900,000 to implement the recovery house certification program in the first year.

(b) On a continuing basis: The Department for Behavioral

Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$900,000 annually, on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be funded through a combination of federal grant funds and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation may result in an increased need for funding and or the establishment of fees dependent upon the request from the impacted entities. The impact is unknown at this time and is being implemented at no cost to the applicants.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.502

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$900,000 to implement the recovery house certification program in the first year.

(d) How much will it cost to administer this program for subsequent years? The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$900,000 annually, on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: To administer this regulation, funds are needed to support salaries of at least 8 full-time staff to implement the certification process, travel reimbursement to perform recovery residence site visits, training and technical assistance, community outreach and education. These costs also include the funds necessary to purchase, implement, and utilize a data management platform.

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

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

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? This administrative regulation will not generate cost saving for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation should not cost regulated entities in the first year for the provision of already established services.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation should not cost regulated entities in subsequent years for the provision of already established services.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 9, 2023

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Thursday, November 9, 2023 at 2:00 p.m. in Room 154 of the Capitol Annex. Representative West, 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 Steve West; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Cassie Trueblood, Education Professional Standards Board; Taylor Brown, Board of Elections, Eden Davis, Christopher Harlow, Board of Pharmacy; Eddie Sloan, John Wood, Board of Emergency Medical Services; Dave Dreves, Steven Fields, Jenny Gilbert, Gabe Jenkins, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Nathan Goens, Scott Jordan, Russ Williams, Department of Justice; Jonathan Gifford, Law Enforcement Council; Amy Barker, Leah Boggs, Allison Brown, William Codell, Department of Juvenile Justice; Todd Allen, Department of Education; Jamie Eads, Jennifer Wolsing, Travers Manley, Horse Racing Commission; Daniel Bell, Julie Brooks, Wes Duke, Troy Wilkerson, Department of Public Health; Phyllis Milsbaugh, Rachael Ratliff, Department for Developmental Health, Developmental and Intellectual Disabilities; Joe Barnett, Kelli Blair, Department for Community Based Services; David Barron, Sam Potter, Department of Public Advocacy; Jim Higdon, Cornbread Hemp, and Katelyn Wiard, U.S. Hemp Roundtable.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Educator Preparation

016 KAR 005:060. Literacy program requirements for middle school, high school, grades 5-12, and grades P-12. Cassie Trueblood, counsel, represented the board.

STATE BOARD OF ELECTIONS: Forms and Procedures

031 KAR 004:196E. Consolidation of precincts and precinct election officers. Taylor Brown, general counsel, represented the board.

In response to a question by Senator Thayer, Mr. Brown stated that the board was available to meet with legislators to consider concerns of constituents regarding access to consolidated polling locations and vote centers. Because this model was relatively new, centralized polling location provisions would require adjustments. The board itself had suggestions to improve the process for all parties and offered to provide additional data.

In response to a question by Co-Chair West, Mr. Brown stated that the amendment revised the precinct form to add a field for stating parking sufficiency.

031 KAR 004:196. Consolidation of precincts and precinct election officers.

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 and 2 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: Board of Pharmacy

201 KAR 002:040. Registration of pharmacist interns. Eden Davis, general counsel, represented the board.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:550. Required equipment and vehicle standards. 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 1, 2, and 10 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 001:115. Propagation of aquatic organisms. Dave

Dreves, fisheries director; David Jenkins, deputy commissioner; and Jenny Gilbert, legislative liaison, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to specify the procedure for obtaining the cabinet's approval for additional paddlefish stocking events beyond the authorized one (1) stocking event per approved water supply lake; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 001:125. Transportation of fish.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 5 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to delete language stating that a Fish Transportation Permit is to be renewed annually by calendar year. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 002:083. Holding and intrastate transportation of captive cervids.

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 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for the term, "KDSS"; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Livestock, Poultry, and Fish

302 KAR 022:150. Cervids. Clint Quarles, counsel, represented the department. Jenny Gilbert, legislative liaison, and David Jenkins, deputy commissioner, Department of Fish and Wildlife Resources, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Quarles

stated that the Department of Agriculture had proposed changes to this administrative regulation based on suggestions from both the previous and current State Veterinarians, but did not have statutory authority to make the changes requested by the Department of Fish and Wildlife Resources. Mr. Jenkins stated that it was important that monitoring for Chronic Wasting Disease (CWD) be continuous.

In response to a question by Co-Chair Lewis, Ms. Gilbert stated that, in order to protect Kentucky from CWD, changes were necessary pertaining to cervids that seemed to be left unregulated if a cervid farm certification was no longer valid. Mr. Quarles stated that the Department of Agriculture preferred statutory authority be given to the Department of Fish and Wildlife Resources to destroy these unregulated cervids that were no longer classified as farmed or wild.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, 5, 20, and 22 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: Capital Punishment

501 KAR 016:310. Pre-execution medical actions. Allison Brown, counsel; Nathan Goens, attorney; Scott Jordan, acting deputy commissioner; and Russ Williams, licensed psychologist, represented the department. Sam Potter, on behalf of David Barron, Department of Public Advocacy, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Goens stated that the amendments made to this administrative regulation were sufficient to address legal concerns. Mr. Potter stated that the Department of Public Advocacy had concerns similar to those expressed in the determination by the Franklin County Circuit Court that this administrative regulation did not contain mechanisms to suspend an execution if there was an intellectual disability or impairment. As amended, this administrative regulation still did not comply.

In response to questions by Senator Thayer, Mr. Goens stated that this administrative regulation neither made it easier, nor more difficult, to perform an execution. This amendment was to comply with federal standards expressed by Franklin County Circuit Court. An inmate with a death penalty sentence could be competent at the time of the crime and become impaired during the incarceration period. Pursuant to U.S. and Kentucky Supreme Court precedents, that hypothetical scenario would prevent a legal execution.

In response to questions by Representative Grossberg, Mr. Williams stated that age-related decline and mental health status were reviewed weekly. Those review records would be used to comply with mental health provisions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 4 to insert existing language that was inadvertently omitted. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Law Enforcement Council

503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards. Jonathan Gifford, staff attorney, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare

505 KAR 001:010. Definitions. Amy Barker, assistant general counsel, and Leah Boggs, general counsel, represented the department.

In response to a question by Co-Chair West, Ms. Boggs stated that this package of administrative regulations was for compliance with Senate Bill 162 and House Bill 3 from the 2023 Regular Session of the General Assembly. The amendments were in accordance with the plan to implement a regional model once feasible.

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 LABOR CABINET: Department of Education: Office of Chief State School Officer

701 KAR 005:110. Use of local monies to reduce unmet technology need. Todd Allen, deputy commissioner and general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Administration and Finance

702 KAR 003:340. Approval of school district lease agreements.

In response to questions by Co-Chair West, Mr. Allen stated that the amendments to lease approval agreements would implement preexisting statutes and streamline processes so that school districts could verify records, materials, and information in order to receive approval or denial of lease agreements from the department in a timely manner.

A motion was made and seconded to approve the following

amendments: (1) to amend the RELATES TO paragraph and Local Board Attorney Certification form to delete the citation to KRS 45.570; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance and Operation

702 KAR 007:125. Pupil attendance.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 9, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Horse Racing: General

810 KAR 002:020. Thoroughbred and flat racing officials. Jamie Eads, executive director; Travers Manley, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission.

In response to questions by Senator Thayer, Ms. Eads stated that these administrative regulations addressed salient issues prior to the start of quarter horse racing at a new track currently under construction near Ashland.

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

Horse Racing: Flat and Steeplechase Racing

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

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.

810 KAR 004:010. Horses.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 11 and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3, 11, 12, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 004:040. Running of the race.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 10 and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Food and Cosmetics

902 KAR 045:190E. Hemp-derived cannabinoid products; packaging and labeling requirements. Julie Brooks, policy specialist, and Wes Duke, general counsel, represented the department. Jim Higdon, cofounder, Cornbread Hemp, and Katelyn Wiard, director of operations, U.S. Hemp Roundtable, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Brooks stated that the amendments to this emergency administrative regulation were in response to House Bill 544 from the 2023 Regular Session of the General Assembly.

In response to a question by Co-Chair West, Ms. Wiard stated that the U.S. Hemp Roundtable had concerns regarding cannabinoid product ratio requirements and fees. Kentucky was establishing a 25:1 ratio of CBD to THC. Colorado and Maryland required a ratio of 15:1. There was a \$200 fee for every hemp product, which was burdensome and should be lowered or changed to a product classification fee, rather than a fee for individual products.

In response to a question by Co-Chair West, Mr. Higdon stated that Cornbread Hemp opposed Kentucky's overuse of "adult" labeling for non-intoxicating products.

In response to a question by Representative Frazier Gordon, Mr. Duke stated that the intent was to create a robust regulatory scheme for public safety and business integrity. The department was open to further dialog with legislators and stakeholders about this new program.

Senator Thayer stated that the department should continue to address these stakeholder concerns and should involve brewers and alcohol-related industries in these discussions.

Representative Grossberg stated that there were concerns about safety and youth access. The 25:1 ratio might be confusing. A minimum standard of index per unit would be less confusing and thus safer for avoiding over consumption.

Co-Chair West asked that the department continue to work with stakeholders before the ordinary version of this administrative regulation came to the subcommittee for consideration.

Radiology

902 KAR 100:019. Standards for protection against radiation.

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 Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Mental Health

908 KAR 002:300E. Kentucky problem gambling assistance account. Phyllis Milsbaugh, assistant division director, and Rachael Ratliff, regulation coordinator, represented the division.

Department for Community Based Services: Child Support

921 KAR 001:420. Child support distribution. Kelli Blair, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Ms. Blair stated that changes to this administration relieved recipients from reporting escrow as income. The escrow information was still accessible by the department.

The following administrative regulations were deferred or removed from the November 9, 2023, subcommittee agenda:

PERSONNEL CABINET: Classified

101 KAR 002:210E. 2023 and 2024 Plan Year Handbooks for the Public Employee Health Insurance Program.

VOLUME 50, NUMBER 6– DECEMBER 1, 2023

KENTUCKY COMMISSION ON HUMAN RIGHTS: Human Rights
104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

104 KAR 001:080. Guidelines on fair housing.

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

Board of Veterinary Examiners

201 KAR 016:510. Fees for veterinarians.

201 KAR 016:512. Fees for veterinary technicians.

201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists.

201 KAR 016:516. Fees – other fees.

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 020:700. Medication aide training programs and credentialing of medication aides.

Board of Social Work

201 KAR 023:055. Inactive status of license.

201 KAR 023:160. Temporary permission to practice.

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

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Underground Storage Tanks
401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Sports Wagering

809 KAR 001:002. Service provider licensing.

809 KAR 001:003. Occupational licenses.

Sports Wagering: Technical Criteria

809 KAR 010:001. General provisions.

809 KAR 010:002. Standards for sports wagering.

809 KAR 010:003. Technical requirements and oversight.

809 KAR 010:004. Sports wagering accounts.

809 KAR 010:005. Licensed premises.

809 KAR 010:006. Audit and internal control standards.

809 KAR 010:007. Responsible gaming and advertising.

809 KAR 010:008. Disciplinary actions and hearings.

General

810 KAR 002:100. Self-exclusion.

Horse Racing: Licensing

810 KAR 003:010. 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 non-substantive review.

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

908 KAR 002:300. Kentucky problem gambling assistance account.

The subcommittee adjourned at 3:25 p.m. The next meeting of this subcommittee was tentatively scheduled for December 11, 2023, at 1 p.m. in Room 149 of the Annex.

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 NATURAL RESOURCES AND
ENERGY**

Meeting of November 16, 2023

The Interim Joint Committee on Natural Resources and Energy met on November 16, 2023, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on November 1, 2023, pursuant to KRS 13A.290(6):

401 KAR 051:010
301 KAR 001:122

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 November 16, 2023, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 50th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

F - 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

F - 10

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

F - 18

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

F - 19

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

F - 20

A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 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 <i>Register</i> year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
* Statement of Consideration not filed by deadline			Replaced	1924	7-5-2023
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
*** Withdrawn before being printed in Register			Replaced	1928	7-5-2023
IJC Interim Joint Committee			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Replaced	1167	7-5-2023
			701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
			Replaced	1935	7-5-2023
			701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
			Replaced	1216	7-5-2023
			787 KAR 001:090E	49 Ky.R. 1571	12-22-2022
			Replaced	2096	8-1-2023
			787 KAR 001:100E	49 Ky.R. 1575	12-22-2022
			806 KAR 017:570E	49 Ky.R. 2215	5-15-2023
			As Amended	50 Ky.R. 601	8-8-2023
			809 KAR 001:002E	50 Ky.R. 339	7-10-2023
			809 KAR 001:003E	50 Ky.R. 341	7-10-2023
			Replaced	2097	8-1-2023
			809 KAR 010:001E	50 Ky.R. 346	7-10-2023
			Am Comments	775	9-15-2023
			809 KAR 010:002E	50 Ky.R. 349	7-10-2023
			Am Comments	778	9-15-2023
			809 KAR 010:003E	50 Ky.R. 354	7-10-2023
			Am Comments	783	9-15-2023
			809 KAR 010:004E	50 Ky.R. 358	7-10-2023
			Am Comments	786	9-15-2023
			809 KAR 010:005E	50 Ky.R. 362	7-10-2023
			809 KAR 010:006E	50 Ky.R. 369	7-10-2023
			Am Comments	791	9-15-2023
			809 KAR 010:007E	50 Ky.R. 375	7-10-2023
			Reprint	1246	12-1-2023
			809 KAR 010:008E	50 Ky.R. 377	7-10-2023
			810 KAR 001:030E	50 Ky.R. 379	7-10-2023
			807 KAR 005:001E	49 Ky.R. 734	9-14-2022
			810 KAR 004:010E	49 Ky.R. 2048	3-29-2023
			900 KAR 005:020E	49 Ky.R. 1880	3-15-2023
			Am Comments	2256	5-11-2023
			900 KAR 006:075E	49 Ky.R. 1882	3-15-2023
			Am Comments	2257	5-11-2023
			900 KAR 006:080E	50 Ky.R. 11	5-19-2023
			900 KAR 014:010E	49 Ky.R. 2052	3-29-2023
			Replaced	2164	9-27-2023
			902 KAR 020:490E	49 Ky.R. 1576	12-29-2022
			Replaced	2307	6-21-2023
			902 KAR 045:190E	50 Ky.R. 584	8-1-2023
			Am Comments	1021	10-13-2023
			902 KAR 055:015E	49 Ky.R. 2054	3-23-2023
			Replaced	50 Ky.R. 2171	10-25-2023
			907 KAR 001:038E	49 Ky.R. 2057	4-12-2023
			As Amended	2261	5-9-2023
			907 KAR 001:126E	49 Ky.R. 2062	4-12-2023
			As Amended	2263	5-9-2023
			907 KAR 001:632E	49 Ky.R. 2069	4-12-2023
			As Amended	2268	5-9-2023
			Am Comments	50 Ky.R. 14	6-13-2023
			907 KAR 009:010E	50 Ky.R. 1017	10-4-2023
			907 KAR 020:010E	49 Ky.R. 2234	5-15-2023
			Replaced	50 Ky.R. 695	9-27-2023
			907 KAR 020:045E	49 Ky.R. 2237	5-15-2023
			Replaced	50 Ky.R. 697	9-27-2023
			907 KAR 020:075E	49 Ky.R. 2240	5-15-2023
			Replaced	50 Ky.R. 698	9-27-2023
			907 KAR 020:100E	49 Ky.R. 2243	5-15-2023
			Replaced	50 Ky.R. 700	9-27-2023
			908 KAR 002:300E	592	7-31-2023
016 KAR 002:240E	50 Ky.R. 302	6-29-2023			
As Amended IJC	595	8-1-2023			
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023			
As Amended	50 Ky.R. 596	8-8-2023			
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023			
As Amended	50 Ky.R. 599	8-8-2023			
030 KAR 010:010E	50 Ky.R. 303	6-29-2023			
030 KAR 010:020E	50 Ky.R. 305	6-29-2023			
030 KAR 010:030E	50 Ky.R. 307	6-29-2023			
030 KAR 010:040E	50 Ky.R. 309	6-29-2023			
030 KAR 010:050E	50 Ky.R. 311	6-29-2023			
030 KAR 010:060E	50 Ky.R. 312	6-29-2023			
030 KAR 010:070E	50 Ky.R. 314	6-29-2023			
030 KAR 010:080E	50 Ky.R. 315	6-29-2023			
030 KAR 010:090E	50 Ky.R. 317	6-29-2023			
030 KAR 010:100E	50 Ky.R. 318	6-29-2023			
030 KAR 010:110E	50 Ky.R. 320	6-29-2023			
030 KAR 010:120E	50 Ky.R. 321	6-29-2023			
031 KAR 004:196E	50 Ky.R. 582	8-15-2023			
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023			
Replaced	2272	7-24-2023			
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023			
Replaced	2273	7-24-2023			
101 KAR 001:365E	50 Ky.R. 324	7-11-2023			
101 KAR 002:210E	50 Ky.R. 772	9-15-2023			
105 KAR 001:148E	50 Ky.R. 1014	10-11-2023			
201 KAR 023:016E	49 Ky.R. 976	10-3-2022			
Withdrawn		6-28-2023			
201 KAR 023:160E	50 Ky.R. 326	6-28-2023			
201 KAR 023:051E	49 Ky.R. 1239	11-15-2022			
Replaced	1803	7-5-2023			
202 KAR 002:020E	50 Ky.R. 329	7-5-2023			
202 KAR 007:555E	50 Ky.R. 5	5-22-2023			
Replaced	816	10-25-2023			
503 KAR 001:140E	50 Ky.R. 331	6-27-2023			
505 KAR 001:120E	49 Ky.R. 1567	1-13-2023			
Am Comments	1886	3-6-2023			
Replaced	50 Ky.R. 40	7-20-2023			
505 KAR 001:140E	49 Ky.R. 1569	1-13-2023			
Am Comments	1888	3-6-2023			
As Amended	2075	4-11-2023			
Replaced	50 Ky.R. 40	9-21-2023			
505 KAR 001:200E	49 Ky.R. 2208	5-15-2023			
Am Comments	50 Ky.R. 385	7-12-2023			
505 KAR 001:210E	49 Ky.R. 2211	5-15-2023			
505 KAR 001:220E	49 Ky.R. 2213	5-15-2023			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Am Comments	50 Ky.R. 1030	10-12-2023	Amended	50 Ky.R. 74	
922 KAR 001:360E	49 Ky.R. 2248	5-15-2023	As Amended	798	
Am Comments	50 Ky.R. 387	7-13-2023	032 KAR 001:046	50 Ky.R. 231	
<hr/>			As Amended	799	
ORDINARY ADMINISTRATIVE REGULATIONS			032 KAR 001:050		
011 KAR 005:001			Amended	50 Ky.R. 76	
Amended	50 Ky.R. 66		As Amended	799	
As Amended	1034		032 KAR 004:020	50 Ky.R. 232	
011 KAR 008:030			032 KAR 002:020		
Amended	50 Ky.R. 853		Amended	50 Ky.R. 401	
011 KAR 015:040			As Amended	1044	
Amended	50 Ky.R. 69		032 KAR 002:030		
011 KAR 015:110			Amended	50 Ky.R. 403	
Amended	50 Ky.R. 71		As Amended	1045	
As Amended	1035		032 KAR 002:040		
013 KAR 005:010	50 Ky.R. 486		Amended	50 Ky.R. 405	
As Amended	1036		As Amended	1046	
013 KAR 005:020	50 Ky.R. 488		032 KAR 002:050		
As Amended	1037		Amended	50 Ky.R. 407	
016 KAR 002:240	50 Ky.R. 490		032 KAR 002:060		
As Amended	1038		Amended	50 Ky.R. 409	
016 KAR 004:060			As Amended	1048	
Amended	49 Ky.R. 1810	9-5-2023	032 KAR 002:221(r)	50 Ky.R. 511	
016 KAR 005:060			032 KAR 002:230	50 Ky.R. 512	
Amended	50 Ky.R. 715		As Amended	1049	
016 KAR 009:080			040 KAR 009:010	49 Ky.R. 1707	
Amended	49 Ky.R. 2334		As Amended	2272	7-24-2023
As Amended	50 Ky.R. 618		040 KAR 009:020	49 Ky.R. 1709	
016 KAR 009:100			As Amended	2273	7-24-2023
Amended	49 Ky.R. 2339		045 KAR 001:030		
As Amended	50 Ky.R. 621		Amended	49 Ky.R. 1473	7-5-2023
017 KAR 003:020			045 KAR 001:040		
Amended	49 Ky.R. 1469		Amended	49 Ky.R. 1958	
As Amended	1898	6-21-2023	As Amended	50 Ky.R. 19	10-3-2023
017 KAR 006:020	50 Ky.R. 984		101 KAR 001:365		
017 KAR 006:030	50 Ky.R. 986		Amended	50 Ky.R. 411	
030 KAR 006:012	50 Ky.R. 492		As Amended	1049	
030 KAR 010:010	50 Ky.R. 493		101 KAR 002:034		
As Amended	1038		Amended	49 Ky.R. 1960	
030 KAR 010:020	50 Ky.R. 494		As Amended	50 Ky.R. 622	
As Amended	1039		101 KAR 002:095		
030 KAR 010:030	50 Ky.R. 496		Amended	49 Ky.R. 1966	
As Amended	1040		As Amended	50 Ky.R. 628	
030 KAR 010:040	50 Ky.R. 498		101 KAR 002:181	49 Ky.R. 2030	
As Amended	1040		101 KAR 002:210		
030 KAR 010:050	50 Ky.R. 500		Amended	50 Ky.R. 857	
As Amended	1041		101 KAR 003:045		
030 KAR 010:060	50 Ky.R. 501		Amended	49 Ky.R. 1968	
As Amended	1042		As Amended	50 Ky.R. 629	
030 KAR 010:070	50 Ky.R. 502		104 KAR 001:010		
As Amended	1042		Amended	50 Ky.R. 78	
030 KAR 010:080	50 Ky.R. 504		104 KAR 001:040		
As Amended	1042		Amended	50 Ky.R. 80	
030 KAR 010:090	50 Ky.R. 505		104 KAR 001:050		
As Amended	1042		Amended	50 Ky.R. 82	
030 KAR 010:100	50 Ky.R. 506		104 KAR 001:080		
As Amended	1043		Amended	50 Ky.R. 84	
030 KAR 010:110	50 Ky.R. 508		104 KAR 001:100		
As Amended	1043		Amended	50 Ky.R. 86	
030 KAR 010:120	50 Ky.R. 509		105 KAR 001:001		
As Amended	1043		Amended	49 Ky.R. 1535	
031 KAR 004:196			As Amended	1899	7-5-2023
Amended	50 Ky.R. 717		105 KAR 001:148	50 Ky.R. 1207	
As Amended	1251		105 KAR 001:215		
032 KAR 001:020			Amended	50 Ky.R. 1168	
Amended	50 Ky.R. 73		105 KAR 001:220		
As Amended	798		Amended	49 Ky.R. 2342	
032 KAR 001:030			As Amended	50 Ky.R. 633	
			105 KAR 001:270		
			Amended	50 Ky.R. 1173	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
105 KAR 001:365			201 KAR 008:563	49 Ky.R. 1863	
Amended	49 Ky.R. 1537		As Amended	2276	7-24-2023
As Amended	1900	7-5-2023	201 KAR 009:067	50 Ky.R.	
105 KAR 001:390			201 KAR 016:510		
As Amended	49 Ky.R. 317		Amended	50 Ky.R. 721	
105 KAR 001:457	50 Ky.R. 514		Am Comments	1291	
As Amended	1050		201 KAR 016:512		
106 KAR 004:020			Amended	50 Ky.R. 724	
As Amended	800		Am Comments	1294	
109 KAR 017:010	49 Ky.R. 2031		201 KAR 016:514		
As Amended	50 Ky.R. 19	9-26-2023	Amended	50 Ky.R. 726	
201 KAR 001:050			Am Comments	1297	
Amended	49 Ky.R. 2347		201 KAR 016:516		
As Amended	801		Amended	50 Ky.R. 729	
201 KAR 001:190			Am Comments	1299	
Amended	49 Ky.R. 1639		201 KAR 016:550		
As Amended	2076		Amended	49 Ky.R. 1473	
As Amended IJC	50 Ky.R. 19	6-22-2023	As Amended	1903	7-5-2023
Amended	1360		Amended	50 Ky.R. 413	
201 KAR 002:020			Am Comments	1301	
Amended	50 Ky.R. 88		201 KAR 016:552	49 Ky.R. 1540	
As Amended	1053		As Amended	1905	7-5-2023
201 KAR 002:040			Amended	50 Ky.R. 416	
Amended	50 Ky.R. 719		Am Comments	1304	
201 KAR 002:050			201 KAR 016:560		
Amended	50 Ky.R. 90		Amended	49 Ky.R. 1475	
Am Comments	825		As Amended	1907	7-5-2023
As Amended	1054		Amended	50 Ky.R. 419	
201 KAR 002:076			Am Comments	1307	
Amended	50 Ky.R. 91		201 KAR 016:562	49 Ky.R. 1543	
As Amended	802	10-25-2023	As Amended	1908	7-5-2023
201 KAR 002:105			201 KAR 016:610		
Amended	50 Ky.R. 95		Amended	49 Ky.R. 1480	7-5-2023
As Amended	1054		201 KAR 016:572		
201 KAR 002:165			Amended	49 Ky.R. 1478	
Amended	50 Ky.R. 1178		As Amended	1909	7-5-2023
201 KAR 002:205			201 KAR 016:610		
Amended	50 Ky.R. 99		Amended	49 Ky.R. 1480	
As Amended	1057		201 KAR 016:701	50 Ky.R. 518	
201 KAR 002:225			Am Comments	1309	
Amended	50 Ky.R. 101		201 KAR 016:702	50 Ky.R. 520	
As Amended	1058		Am Comments	1312	
201 KAR 002:240			201 KAR 016:750	50 Ky.R. 522	
Amended	50 Ky.R. 103		Am Comments	1314	
As Amended	1059		201 KAR 019:225		
201 KAR 002:320			Amended	49 Ky.R. 2349	
Amended	50 Ky.R. 104		As Amended	50 Ky.R. 636	
As Amended	1059		201 KAR 020:056		
201 KAR 002:340			Amended	50 Ky.R. 859	
Amended	50 Ky.R. 108		201 KAR 020:057		
As Amended	1062		Amended	50 Ky.R. 862	
201 KAR 002:380			201 KAR 020:065		
Amended	49 Ky.R. 625		Amended	50 Ky.R. 867	
Am Comments	1451		201 KAR 020:067	50 Ky.R. 990	
As Amended	1755		201 KAR 020:215		
As Amended	2078	6-21-2023	Amended	50 Ky.R. 871	
201 KAR 002:390			201 KAR 020:220		
Amended	50 Ky.R. 110		Amended	50 Ky.R. 874	
As Amended	1063		201 KAR 020:225		
201 KAR 005:002	49 Ky.R. 1371		Amended	50 Ky.R. 1363	
Am Comments	1943		201 KAR 020:240		
As Amended	2080	6-21-2023	Amended	49 Ky.R. 2351	9-27-2023
201 KAR 005:005	50 Ky.R. 989		201 KAR 020:360		
201 KAR 005:055			Amended	49 Ky.R. 1812	
Amended	49 Ky.R. 1974		As Amended	2280	7-24-2023
As Amended	50 Ky.R. 22	7-24-2023	201 KAR 020:390		
201 KAR 006:060			Amended	49 Ky.R. 1815	
Amended	48 Ky.R. 3029		As Amended	2282	7-24-2023
201 KAR 008:533	49 Ky.R. 1859		201 KAR 020:411		
As Amended	2273	7-24-2023	Amended	49 Ky.R. 1642	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2082	6-21-2023	201 KAR 036:040		
201 KAR 020:472			Amended	50 Ky.R. 886	
Amended	49 Ky.R. 1645		201 KAR 036:045		
As Amended	2084	6-21-2023	Amended	50 Ky.R. 893	
201 KAR 020:476			201 KAR 036:050		
Amended	49 Ky.R. 1649		Amended	50 Ky.R. 895	
As Amended	2087	6-21-2023	201 KAR 036:060		
201 KAR 020:478			Amended	50 Ky.R. 898	
Amended	49 Ky.R. 1652		201 KAR 036:065		
Am Comments	2316		Amended	50 Ky.R. 901	
As Amended	50 Ky.R. 23	7-24-2023	201 KAR 036:070		
201 KAR 020:620			Amended	50 Ky.R. 903	
Amended	50 Ky.R. 419		201 KAR 036:072		
As Amended	1065		Amended	50 Ky.R. 908	
201 KAR 020:700			201 KAR 036:075		
Amended	49 Ky.R. 2424		Amended	50 Ky.R. 910	
Am Comments	50 Ky.R. 826		201 KAR 036:090		
201 KAR 021:025			Amended	50 Ky.R. 912	
Amended	49 Ky.R. 1976	9-27-2023	202 KAR 002:020	50 Ky.R. 529	
201 KAR 021:041			As Amended	1066	
Amended	49 Ky.R. 1978		202 KAR 007:030		
Am Comments	50 Ky.R. 50		Amended	50 Ky.R. 1180	
As Amended	50 Ky.R. 638	9-27-2023	202 KAR 007:201		
201 KAR 021:042			Amended	49 Ky.R. 1484	
Amended	49 Ky.R. 1981		As Amended	1911	6-21-2023
Am Comments	50 Ky.R. 52		202 KAR 007:301		
As Amended	50 Ky.R. 639	9-27-2023	Amended	49 Ky.R. 1488	
201 KAR 021:075			As Amended	1913	6-21-2023
Amended	49 Ky.R. 1983	9-27-2023	202 KAR 007:330		
201 KAR 021:095			Amended	49 Ky.R. 1492	
Amended	49 Ky.R. 1985		As Amended	1916	6-21-2023
As Amended	50 Ky.R. 640	9-27-2023	202 KAR 007:401		
201 KAR 021:105	49 Ky.R. 2032		Amended	49 Ky.R. 1497	6-21-2023
As Amended	50 Ky.R. 641	9-27-2023	202 KAR 007:410	50 Ky.R. 1209	
201 KAR 022:045			202 KAR 007:510		
Amended	49 Ky.R. 2353		Amended	49 Ky.R. 2355	
As Amended	50 Ky.R. 642	9-27-2023	As Amended	50 Ky.R. 644	9-27-2023
201 KAR 022:053			202 KAR 007:550		
Amended	50 Ky.R. 877		Amended	50 Ky.R. 426	
201 KAR 022:170			As Amended	1251	
Amended	49 Ky.R. 1483		202 KAR 007:555		
As Amended	1910	6-21-2023	Amended	50 Ky.R. 135	
Amended	50 Ky.R. 423		As Amended	816	10-25-2023
201 KAR 023:016	49 Ky.R. 1214		202 KAR 007:601		
Withdrawn		6-28-2023	Amended	49 Ky.R. 1506	6-21-2023
201 KAR 023:051	49 Ky.R. 1374		301 KAR 001:001	49 Ky.R. 2034	
Am Comments	1803		As Amended	50 Ky.R. 25	7-20-2023
As Amended	1910		301 KAR 001:115		
201 KAR 023:055			Amended	50 Ky.R. 433	
Amended	50 Ky.R. 424		As Amended	1256	
201 KAR 023:160	50 Ky.R. 524		301 KAR 001:122		
201 KAR 023:170	50 Ky.R. 527		Amended	50 Ky.R. 140	
201 KAR 027:005			Am Comments	830	11-16-2023
Amended	50 Ky.R. 113		301 KAR 001:125		
As Amended	804		Amended	50 Ky.R. 436	
201 KAR 027:008			As Amended	1258	
Amended	50 Ky.R. 115		301 KAR 001:201		
As Amended	804		Amended	50 Ky.R. 142	10-19-2023
201 KAR 027:011			301 KAR 001:410		
Amended	50 Ky.R. 119		Amended	50 Ky.R. 147	10-19-2023
As Amended	806		301 KAR 002:015		
201 KAR 027:012			Amended	49 Ky.R. 1818	
Amended	50 Ky.R. 126		As Amended	2284	6-8-2023
201 KAR 027:016			301 KAR 002:030		
Amended	50 Ky.R. 128		Amended	50 Ky.R. 1182	
As Amended	811		301 KAR 002:083		
201 KAR 036:005			Amended	50 Ky.R. 731	
Amended	50 Ky.R. 880		As Amended	1259	
201 KAR 036:030			301 KAR 002:090		
Amended	50 Ky.R. 882		Amended	1819	6-8-2023

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
301 KAR 002:144			401 KAR 042:250		
Amended	49 Ky.R. 1654		Amended	50 Ky.R. 735	
As Amended	2089	6-8-2023	401 KAR 045:010		
301 KAR 002:172			Amended	50 Ky.R. 914	
Amended	50 Ky.R. 438		401 KAR 045:020		
As Amended	1262		Amended	50 Ky.R. 916	
301 KAR 002:222			401 KAR 045:025		
Amended	49 Ky.R. 1987		Amended	50 Ky.R. 919	
As Amended	50 Ky.R. 27	7-20-2023	401 KAR 045:030		
301 KAR 002:245	49 Ky.R. 1545		Amended	50 Ky.R. 921	
As Amended	1919	6-8-2023	401 KAR 045:040		
301 KAR 002:300			Amended	50 Ky.R. 926	
Amended	49 Ky.R. 1656		401 KAR 045:050		
As Amended	2090	6-8-2023	Amended	50 Ky.R. 929	
301 KAR 003:120			401 KAR 045:080		
Amended	49 Ky.R. 1516		Amended	50 Ky.R. 932	
As Amended	1920	6-8-2023	401 KAR 045:100		
301 KAR 004:021	50 Ky.R. 1437		Amended	50 Ky.R. 935	
301 KAR 004:110			401 KAR 045:105	50 Ky.R. 994	
Amended	49 Ky.R. 1822		401 KAR 045:140		
As Amended	2284	6-8-2023	Amended	50 Ky.R. 942	
301 KAR 005:001			401 KAR 045:160		
Amended	49 Ky.R. 1659	6-8-2023	Amended	50 Ky.R. 944	
Amended	50 Ky.R. 1365		401 KAR 045:250		
301 KAR 005:010			Amended	50 Ky.R. 948	
Amended	49 Ky.R. 1661		401 KAR 051:010		
As Amended	2092	6-8-2023	Amended	50 Ky.R. 166	11-16-2023
Amended	50 Ky.R. 1367		401 KAR 058:040		
301 KAR 005:020			Amended	49 Ky.R. 1996	
Amended	49 Ky.R. 1662		As Amended	50 Ky.R. 34	7-20-2023
As Amended	2093	6-8-2023	401 KAR 103:005	50 Ky.R. 1212	
Amended	50 Ky.R. 1368		401 KAR 103:010	50 Ky.R. 1215	
301 KAR 005:022			401 KAR 103:020	50 Ky.R. 1218	
Amended	49 Ky.R. 1664		401 KAR 103:030	50 Ky.R. 1221	
As Amended	2094	6-8-2023	500 KAR 002:020		
301 KAR 005:200			Amended	49 Ky.R. 2002	
Amended	50 Ky.R. 1371		Am Comments	50 Ky.R. 54	
301 KAR 006:001			As Amended	50 Ky.R. 653	
Amended	49 Ky.R. 2128		500 KAR 003:010		
As Amended	50 Ky.R. 650	9-21-2023	Amended	49 Ky.R. 2132	
301 KAR 006:020			As Amended	50 Ky.R. 656	
Amended	49 Ky.R. 2130		500 KAR 003:020		
As Amended	50 Ky.R. 650	9-21-2023	Amended	49 Ky.R. 2134	
301 KAR 011:020	49 Ky.R. 2427		As Amended	50 Ky.R. 656	
As Amended	50 Ky.R. 652	9-21-2023	500 KAR 013:020		
302 KAR 002:010	50 Ky.R. 1438		Amended	50 Ky.R. 1185	
302 KAR 016:010			501 KAR 006:040		
Amended	50 Ky.R. 151		Amended	49 Ky.R. 1353	
As Amended	820	10-19-2023	Am Comments	1805	
302 KAR 016:020			As Amended	1923	
Amended	50 Ky.R. 153		501 KAR 006:150		
As Amended	820	10-19-2023	Amended	49 Ky.R. 1824	
302 KAR 016:030			Am Comments	50 Ky.R. 59	
Amended	50 Ky.R. 154		As Amended	50 Ky.R. 659	
As Amended	821	10-19-2023	501 KAR 016:310		
302 KAR 016:070			Amended	49 Ky.R. 2363	
Repealed	50 Ky.R. 822	10-19-2023	Am Comments	50 Ky.R. 832	
302 KAR 016:071	50 Ky.R. 235		As Amended	1271	
As Amended	822	10-19-2023	503 KAR 001:140		
302 KAR 016:072	50 Ky.R. 236		Amended	50 Ky.R. 442	
As Amended	822	10-19-2023	As Amended	1272	
302 KAR 016:111			505 KAR 001:010		
Amended	50 Ky.R. 156	10-19-2023	Amended	49 Ky.R. 2365	
302 KAR 016:150	50 Ky.R. 1440		Am Comments	50 Ky.R. 834	
302 KAR 022:150			505 KAR 001:100		
Amended	50 Ky.R. 158		Amended	49 Ky.R. 2370	
Am Comments	1080		Am Comments	50 Ky.R. 839	
As Amended	1262		505 KAR 001:110		
302 KAR 033:010	50 Ky.R. 238		Amended	50 Ky.R. 170	
As Amended	822	10-19-2023	505 KAR 001:120		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	49 Ky.R. 1668		Amended	49 Ky.R. 1158	
Am Comments	2318		As Amended	1928	7-5-2023
As Amended	50 Ky.R. 40	7-20-2023	701 KAR 008:030		
505 KAR 001:140			Amended	49 Ky.R. 1167	7-5-2023
Amended	49 Ky.R. 1670		701 KAR 008:040		
Am Comments	2320		Amended	49 Ky.R. 1170	
As Amended	50 Ky.R. 40	9-21-2023	As Amended	1935	7-5-2023
505 KAR 001:180			701 KAR 008:050	49 Ky.R. 1216	7-5-2023
Amended	49 Ky.R. 2373		702 KAR 003:330	50 Ky.R. 1224	
505 KAR 001:185	49 Ky.R. 2429		As Amended	1279	
Am Comments	50 Ky.R. 841		702 KAR 003:340	50 Ky.R. 755	
505 KAR 001:200	49 Ky.R. 2432		702 KAR 007:065		
As Amended	50 Ky.R. 660		Amended	50 Ky.R. 173	
505 KAR 001:210	49 Ky.R. 2434		As Amended	1067	
505 KAR 001:220	49 Ky.R. 2436		702 KAR 007:125		
505 KAR 001:230	49 Ky.R. 2438		Amended	50 Ky.R. 747	
As Amended	50 Ky.R. 661		As Amended	1279	
505 KAR 001:240	50 Ky.R. 240		703 KAR 005:270		
505 KAR 001:250	50 Ky.R. 241		Amended	49 Ky.R. 1832	
Am Comments	1087		Am Comments	50 Ky.R. 61	7-18-2023
505 KAR 001:260	50 Ky.R. 243		704 KAR 003:303		
Am Comments	1089		Amended	49 Ky.R. 1521	7-5-2023
505 KAR 001:270	50 Ky.R. 245		704 KAR 008:060		
Am Comments	1091		Amended	49 Ky.R. 1523	
505 KAR 001:280	248		704 KAR 008:120	49 Ky.R. 1547	9-5-2023
Am Comments	1093		As Amended	1938	7-5-2023
505 KAR 001:290	50 Ky.R. 250		705 KAR 004:231		
505 KAR 001:300	50 Ky.R. 251		Amended	50 Ky.R. 1191	
505 KAR 001:310	253		707 KAR 001:002		
Am Comments	1095		Amended	49 Ky.R. 1525	
505 KAR 001:320	50 Ky.R. 256		As Amended	1938	7-5-2023
505 KAR 001:330	257		739 KAR 002:060		
Am Comments	1098		Amended	49 Ky.R. 2007	
505 KAR 001:340			As Amended	50 Ky.R. 41	9-26-2023
Amended	259		787 KAR 001:090		
Am Comments	1100		Amended	49 Ky.R. 1672	
505 KAR 001:350			As Amended	2096	8-1-2023
Amended	50 Ky.R. 261		787 KAR 001:100		
Am Comments	1101		Amended	49 Ky.R. 1675	
505 KAR 001:360			As Amended	2097	8-1-2023
Amended	50 Ky.R. 263	263	803 KAR 030:010		
Am Comments	1103		Amended	49 Ky.R. 1836	
505 KAR 001:370			As Amended	2285	9-5-2023
Amended	50 Ky.R. 265		806 KAR 003:250	49 Ky.R. 1549	
505 KAR 001:380			As Amended	1942	7-5-2023
Amended	50 Ky.R. 268		806 KAR 006:072	49 Ky.R. 1710	
Am Comments	1105		As Amended	2098	
505 KAR 001:390			As Amended	50 Ky.R. 43	
Amended	50 Ky.R. 270		As Amended	662	8-1-2023
Am Comments	1107		806 KAR 009:400	50 Ky.R. 531	
505 KAR 001:400			As Amended	1070	
Amended	50 Ky.R. 272		806 KAR 017:290		
Am Comments	1109		Amended	50 Ky.R. 449	
505 KAR 001:410			As Amended	1070	
Amended	50 Ky.R. 276		806 KAR 017:590		
Am Comments	1113		Amended	50 Ky.R. 950	
505 KAR 001:420			808 KAR 001:170		
Amended	50 Ky.R. 278		Amended	49 Ky.R. 1184	
Am Comments	1115		As Amended	2291	9-5-2023
601 KAR 014:050			808 KAR 010:440		
Amended	49 Ky.R. 1826	7-18-2023	Amended	49 Ky.R. 1676	
603 KAR 005:155			As Amended	2100	8-1-2023
Amended	50 Ky.R. 1189		808 KAR 010:450		
701 KAR 005:110			Amended	49 Ky.R. 1679	
Amended	50 Ky.R. 745		As Amended	2102	8-1-2023
As Amended	1278		808 KAR 010:501	50 Ky.R. 998	
701 KAR 008:010			808 KAR 016:010	49 Ky.R. 1713	
Amended	49 Ky.R. 1153		As Amended	2104	
As Amended	1924	7-5-2023	As Amended, IJC	50 Ky.R. 664	8-1-2023
701 KAR 008:020			808 KAR 016:020	49 Ky.R. 1716	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2105	8-1-2023	815 KAR 020:030		
809 KAR 001:002	50 Ky.R. 533		Amended	49 Ky.R. 2148	
Am Comments	1317		815 KAR 025:020		
809 KAR 001:003	50 Ky.R. 535		Amended	49 Ky.R. 2151	
Am Comments	1320		As Amended	50 Ky.R. 676	9-26-2023
809 KAR 010:001	50 Ky.R. 540		815 KAR 025:060		
Am Comments	1324		Amended	49 Ky.R. 2156	
809 KAR 010:002	50 Ky.R. 543		As Amended	50 Ky.R. 679	
Am Comments	1327		815 KAR 035:060		
809 KAR 010:003	50 Ky.R. 547		Amended	49 Ky.R. 2160	
Am Comments	1332		As Amended	50 Ky.R. 681	
809 KAR 010:004	50 Ky.R. 551		820 KAR 001:005		
Am Comments	1335		Amended	49 Ky.R. 1683	
809 KAR 010:005	50 Ky.R. 555		As Amended	2107	8-1-2023
Am Comments	1340		820 KAR 001:025		
809 KAR 010:006	50 Ky.R. 561		Amended	49 Ky.R. 1686	
Am Comments	1346		As Amended	2109	8-1-2023
809 KAR 010:007	50 Ky.R. 567		820 KAR 001:130		
Am Comments	352		Amended	49 Ky.R. 1689	
809 KAR 010:008	50 Ky.R. 569		As Amended	2110	8-1-2023
810 KAR 002:020			900 KAR 005:020		
Amended	50 Ky.R. 455		Amended	49 Ky.R. 2024	
Am Comments	1117		Am Comments	50 Ky.R. 395	
810 KAR 002:070			900 KAR 006:075		
Amended	50 Ky.R. 458		Amended	49 Ky.R. 2026	
Am Comments	1120		Am Comments	50 Ky.R. 396	
810 KAR 002:100	49 Ky.R. 2439		900 KAR 006:080		
Am Comments	50 Ky.R. 708		Amended	50 Ky.R. 177	
810 KAR 003:010			900 KAR 007:030		
Amended	50 Ky.R. 462		Amended	50 Ky.R. 1379	
Am Comments	1354		900 KAR 007:040		
810 KAR 004:001			Amended	50 Ky.R. 1382	
Amended	50 Ky.R. 467		900 KAR 014:010		
As Amended	1282		Amended	49 Ky.R. 2164	9-27-2023
810 KAR 004:010			902 KAR 004:120		
Amended	50 Ky.R. 470		Amended	50 Ky.R. 952	
As Amended	1284		902 KAR 020:018		
810 KAR 004:030			Amended	49 Ky.R. 2166	9-27-2023
Amended	50 Ky.R. 473		900 KAR 020:048		
Am Comments	1125		Amended	50 Ky.R. 1385	
As Amended	1286		900 KAR 020:086		
810 KAR 004:040			Amended	50 Ky.R. 1396	
Amended	50 Ky.R. 477		902 KAR 020:300		
As Amended	1288		Amended	50 Ky.R. 179	
810 KAR 004:070			902 KAR 020:470	49 Ky.R. 1219	
Amended	50 Ky.R. 1374		Am Comments	1807	6-21-2023
810 KAR 004:090			902 KAR 020:480	49 Ky.R. 1380	
Amended	49 Ky.R. 2375		Am Comments	1946	
As Amended	50 Ky.R. 665		As Amended	2295	
810 KAR 007:030			As Amended IJC	50 Ky.R. 683	7-25-2023
Amended	49 Ky.R. 2377		902 KAR 020:490	49 Ky.R. 1719	
As Amended	50 Ky.R. 665		Am Comments	2125	
810 KAR 007:040			As Amended	2307	6-21-2023
Amended	49 Ky.R. 2011		902 KAR 020:500	50 Ky.R. 280	10-25-2023
As Amended	50 Ky.R. 45	10-3-2023	902 KAR 045:065		
810 KAR 007:060			Amended	50 Ky.R. 955	
Amended	49 Ky.R. 2381		902 KAR 045:070		
As Amended	50 Ky.R. 668		Amended	50 Ky.R. 962	
810 KAR 008:020			902 KAR 055:015		
Amended	49 Ky.R. 2016		Amended	49 Ky.R. 2171	10-25-2023
815 KAR 004:030			902 KAR 055:110		
Amended	49 Ky.R. 2138		Amended	49 Ky.R. 1357	
As Amended	50 Ky.R. 670		As Amended	2111	6-21-2023
815 KAR 007:130	49 Ky.R. 2153		902 KAR 100:019		
As Amended	50 Ky.R. 672	9-26-2023	Amended	50 Ky.R. 182	
815 KAR 008:010			Am Comments	1129	
Amended	49 Ky.R. 2141		902 KAR 100:040		
815 KAR 010:060			Amended	50 Ky.R. 194	
Amended	49 Ky.R. 2145		Withdrawn		10-11-2023
As Amended	50 Ky.R. 673	9-26-2023	902 KAR 100:050		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	50 Ky.R. 199		As Amended	1801	
Am Comments	1141		921 KAR 001:400		
902 KAR 100:058			Amended	49 Ky.R. 2408	9-27-2023
Amended	50 Ky.R. 205		921 KAR 001:410		
Am Comments	1147		Amended	50 Ky.R. 1198	
902 KAR 100:065			921 KAR 001:420		
Amended	50 Ky.R. 212		Amended	50 Ky.R. 751	
Am Comments	1154		921 KAR 003:020		
902 KAR 100:165			Amended	50 Ky.R. 226	10-25-2023
Amended	50 Ky.R. 215		921 KAR 003:027		
Am Comments	1156		Amended	50 Ky.R. 1202	
902 KAR 100:185	50 Ky.R. 282		921 KAR 003:095	50 Ky.R. 288	
Am Comments	1161		As Amended	823	10-25-2023
902 KAR 100:195			921 KAR 003:100	50 Ky.R. 1226	
Amended	50 Ky.R. 284		922 KAR 001:100		
Am Comments	1163		Amended	49 Ky.R. 1847	
902 KAR 100:200			Am Comments	2322	7-25-2023
Amended	50 Ky.R. 286		922 KAR 001:330		
Am Comments	1165		Amended	49 Ky.R. 1851	
906 KAR 001:190			Am Comments	2326	7-25-2023
Amended	50 Ky.R. 970		922 KAR 001:360		
906 KAR 001:210			Amended	49 Ky.R. 2411	
Amended	49 Ky.R. 2385		Am Comments	50 Ky.R. 844	
As Amended	50 Ky.R. 694	9-27-2023	922 KAR 001:580		
907 KAR 001:025			Amended	50 Ky.R. 481	
Amended	50 Ky.R. 220	10-25-2023	As Amended	1074	
907 KAR 001:038			922 KAR 002:100		
Amended	49 Ky.R. 2174		Amended	50 Ky.R. 1423	
907 KAR 001:044			922 KAR 002:165		
Amended	50 Ky.R. 1409		Amended	50 Ky.R. 1433	
907 KAR 001:061			922 KAR 002:180		
Amended	50 Ky.R. 1414		Amended	49 Ky.R. 2417	
907 KAR 001:082			As Amended	50 Ky.R. 703	9-27-2023
Amended	48 Ky.R. 3092		922 KAR 002:245	49 Ky.R. 2441	
Am Comments	49 Ky.R. 838		As Amended	1078	
As Amended	2113	6-21-2023	922 KAR 002:255	49 Ky.R. 244	
907 KAR 001:126	49 Ky.R. 2185		Am Comments	50 Ky.R. 850	
907 KAR 001:632					
Amended	49 Ky.R. 2178				
Am Comments	50 Ky.R. 709				
907 KAR 003:066					
Amended	50 Ky.R. 1417				
907 KAR 003:190	49 Ky.R. 1868	9-27-2023			
907 KAR 003:310	50 Ky.R. 571				
Am Comments	1354				
907 KAR 009:010					
Amended	50 Ky.R. 1194				
907 KAR 015:005					
Amended	50 Ky.R. 1419				
907 KAR 020:010					
Amended	49 Ky.R. 2388				
As Amended	50 Ky.R. 695	9-27-2023			
907 KAR 020:045					
Amended	49 Ky.R. 2391				
As Amended	50 Ky.R. 697	9-27-2023			
907 KAR 020:075					
Amended	49 Ky.R. 2393				
As Amended	50 Ky.R. 698	9-27-2023			
907 KAR 020:100					
Amended	49 Ky.R. 2396				
As Amended	50 Ky.R. 700	9-27-2023			
908 KAR 001:410	50 Ky.R. 1441				
908 KAR 002:300	50 Ky.R. 756				
Am Comments	1357				
910 KAR 001:180					
Amended	49 Ky.R. 1841				
As Amended	2309	6-21-2023			
910 KAR 003:030					
Amended	49 Ky.R. 2401	9-27-2023			
911 KAR 001:090	49 Ky.R. 1391				

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.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
12.245	201 KAR 036:072		505 KAR 001:330
12.255	201 KAR 036:072		505 KAR 001:340
12.355	202 KAR 007:410		505 KAR 001:350
12.357	201 KAR 036:072		505 KAR 001:360
13B	101 KAR 001:365		505 KAR 001:370
	201 KAR 036:030		505 KAR 001:380
	202 KAR 007:550		505 KAR 001:390
	503 KAR 001:140		505 KAR 001:400
	900 KAR 007:030		505 KAR 001:410
	902 KAR 045:190E		505 KAR 001:420
	922 KAR 001:580	15A.067	505 KAR 001:100
	922 KAR 002:100		505 KAR 001:010
13B.010	921 KAR 001:410		505 KAR 001:110
	921 KAR 001:420		505 KAR 001:185
13B.010-13B170	105 KAR 001:215		505 KAR 001:250
13B.080 – 13B160	902 KAR 004:120		505 KAR 001:260
13B.100 – 13B.070	105 KAR 001:457		505 KAR 001:270
13B.170	921 KAR 001:420		505 KAR 001:280
15.055	921 KAR 001:410		505 KAR 001:300
15.330	503 KAR 001:140		505 KAR 001:310
15.380	503 KAR 001:140		505 KAR 001:320
15.382	503 KAR 001:140		505 KAR 001:330
15.384	503 KAR 001:140		505 KAR 001:340
15.392	503 KAR 001:140		505 KAR 001:350
15.394	503 KAR 001:140		505 KAR 001:360
15.396	503 KAR 001:140		505 KAR 001:370
15.3971	503 KAR 001:140		505 KAR 001:390
15.400	503 KAR 001:140		505 KAR 001:400
15.408	503 KAR 001:140		505 KAR 001:420
15.440	503 KAR 001:140	15A.160	505 KAR 001:200
15.540	503 KAR 001:140	16.505	105 KAR 001:270
15.565	503 KAR 001:140	16.505-16.652	105 KAR 001:215
15.580	503 KAR 001:140	16.578	105 KAR 001:270
15A.020	500 KAR 013:020	16.587	105 KAR 001:457
15A.065	505 KAR 001:010	16.601	105 KAR 001:457
	505 KAR 001:100	17.165	922 KAR 001:580
	505 KAR 001:110	18A.075	101 KAR 001:365
	505 KAR 001:185	18A.0751	101 KAR 001:365
	505 KAR 001:200	18A.030	101 KAR 002:210
	505 KAR 001:240		101 KAR 002:210E
	505 KAR 001:250	18A.095	101 KAR 001:365
	505 KAR 001:260	18A.225	101 KAR 002:210
	505 KAR 001:270		101 KAR 002:210E
	505 KAR 001:280	18A.2254	101 KAR 002:210E
	505 KAR 001:290	36.390	106 KAR 004:020
	505 KAR 001:300	36.392	106 KAR 004:020
	505 KAR 001:310	36.394	106 KAR 004:020
	505 KAR 001:320	36.396	106 KAR 004:020
	505 KAR 001:330	39A.020	902 KAR 020:500
	505 KAR 001:340	39A.350	902 KAR 020:500
	505 KAR 001:350	39A.356	902 KAR 020:500
	505 KAR 001:360	39A.358	902 KAR 020:500
	505 KAR 001:370	40.310	017 KAR 006:020
	505 KAR 001:380		017 KAR 006:030
	505 KAR 001:390	40.350	017 KAR 006:030
	505 KAR 001:400	40.560	017 KAR 006:020
	505 KAR 001:410		017 KAR 006:030
	505 KAR 001:420	40.600	017 KAR 006:020
15A.0652	505 KAR 001:100	45.570	702 KAR 003:340
	505 KAR 001:110	45.A	702 KAR 003:340
	505 KAR 001:185	45.345	301 KAR 005:020
	505 KAR 001:200	61.505	105 KAR 001:457
	505 KAR 001:240	61.505(1)(g)	105 KAR 001:270
	505 KAR 001:250	61.510	105 KAR 001:270
	505 KAR 001:260	61.510-61.705	105 KAR 001:215
	505 KAR 001:270	61.520	105 KAR 001:148
	505 KAR 001:280	61.522	105 KAR 001:148
	505 KAR 001:290	61.565	105 KAR 001:148
	505 KAR 001:300	61.615	105 KAR 001:457
	505 KAR 001:310	61.625	105 KAR 001:270
	505 KAR 001:320	61.635	105 KAR 001:270

KRS SECTION	REGULATION	KRS SECTION	REGULATION
61.640	105 KAR 001:270	150.485	301 KAR 001:115
61.645	105 KAR 001:148		301 KAR 001:125
61.665	105 KAR 001:457	150.600	301 KAR 004:021
61.675	105 KAR 001:148	150.620	301 KAR 001:201
61.685	105 KAR 001:148		301 KAR 001:410
61.690	105 KAR 001:270	150.725	301 KAR 002:083
61.691	105 KAR 001:457	150.740	301 KAR 002:083
61.805-61.850	702 KAR 007:065	150.990	301 KAR 001:201
61.870-61.884	810 KAR 002:100		301 KAR 001:410
	302 KAR 002:010		301 KAR 002:020
	900 KAR 007:040		301 KAR 002:172
61.878	401 KAR 042:250	150.730-150.735	302 KAR 022:150
64.840	301 KAR 005:020	156.029	705 KAR 004:231
65.944	702 KAR 003:340	156.070	701 KAR 005:110
65.946	702 KAR 003:340		702 KAR 003:340
72.020	202 KAR 007:410		702 KAR 007:065
78.510	105 KAR 001:270	156.802	705 KAR 004:231
78.510-78.852	105 KAR 001:215	157.320	702 KAR 007:125
78.545	105 KAR 001:270	157.350	702 KAR 007:125
	105 KAR 001:457	157.650	701 KAR 005:110
78.5518	105 KAR 001:457	157.655	701 KAR 005:110
78.5528	105 KAR 001:457	157.660	701 KAR 005:110
78.5532	105 KAR 001:457	157.665	701 KAR 005:110
78.5534	105 KAR 001:457	158.030	702 KAR 007:125
96A.095	907 KAR 003:066	158.070	702 KAR 007:125
117.066	031 KAR 004:196	158.100	702 KAR 007:125
121.015	032 KAR 001:050	158.240	702 KAR 007:125
	032 KAR 002:221	159.010	702 KAR 007:125
121.120	032 KAR 002:020	159.030	702 KAR 007:125
	032 KAR 002:221		922 KAR 002:100
121.135	032 KAR 002:060	159.035	702 KAR 007:125
	032 KAR 002:230	159.140	702 KAR 007:125
121.140	032 KAR 002:020	159.170	702 KAR 007:125
	032 KAR 002:030	160.160	701 KAR 005:110
	032 KAR 002:040		702 KAR 003:340
	032 KAR 002:050	160.380	702 KAR 007:065
121.160	032 KAR 001:020	160.445	702 KAR 007:065
121.170	032 KAR 001:050	161.020	016 KAR 002:240
121.172	032 KAR 001:046	161.028	016 KAR 005:060
121.180	032 KAR 001:020	161.030	016 KAR 005:060
	032 KAR 001:030	161.200	702 KAR 007:125
	032 KAR 001:046	161.212	702 KAR 003:330
	032 KAR 002:221	164.0401	013 KAR 005:010
131.570	921 KAR 001:410		013 KAR 005:020
142.363	907 KAR 001:025	164.0402	013 KAR 005:010
146.200-146.990	401 KAR 045:030		013 KAR 005:020
150.010	301 KAR 001:201	164.0403	013 KAR 005:010
	301 KAR 001:125	164.0404	013 KAR 005:020
	301 KAR 001:410	164.740	011 KAR 008:030
	301 KAR 002:083	164.740-164.785	011 KAR 005:001
	301 KAR 002:172	164.744	011 KAR 008:030
150.025	301 KAR 004:021	164.753	011 KAR 008:030
150.170	301 KAR 001:125	164.769	011 KAR 008:030
	301 KAR 001:201	164.772	301 KAR 002:030
	301 KAR 001:410		301 KAR 002:083
	301 KAR 002:030	164.7871-164.7885	011 KAR 015:110
	301 KAR 005:200	164.7881	011 KAR 015:040
150.175	301 KAR 001:201	176.010(2)	603 KAR 005:155
	301 KAR 001:410	176.050(1)	603 KAR 005:155
	301 KAR 005:010	177.106	603 KAR 005:155
	301 KAR 005:020	177.830(5)	603 KAR 005:155
	301 KAR 005:200	177.990(2)	603 KAR 005:155
150.177	301 KAR 002:172	186.018	922 KAR 002:100
150.180	301 KAR 001:122	186.020	922 KAR 002:100
	301 KAR 002:172	189.125	922 KAR 002:100
150.195	301 KAR 005:001	191.881-888	922 KAR 002:165
150.235	301 KAR 001:125	199.8943	922 KAR 002:165
	301 KAR 001:410	194A.005	908 KAR 002:300
150.290	301 KAR 001:115	194A.705	201 KAR 020:700
	301 KAR 002:083	194.540	201 KAR 020:620
150.340	301 KAR 001:201	194.705	902 KAR 020:300
150.411	301 KAR 002:172	194A.005	902 KAR 100:040
150.412	301 KAR 002:030		902 KAR 100:050
150.445	301 KAR 001:410		902 KAR 100:058

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 100:065		902 KAR 020:300
	902 KAR 100:185	209.032	902 KAR 020:048
	902 KAR 100:195		902 KAR 020:086
	902 KAR 100:200		902 KAR 020:300
	908 KAR 002:300	210	908 KAR 002:300
194A.025	907 KAR 015:005	210.366	201 KAR 036:030
194A.050	922 KAR 002:100	210.410	908 KAR 002:300
194A.060	907 KAR 001:044	211.180	902 KAR 100:185
194A.540	201 KAR 020:215		902 KAR 100:195
	201 KAR 020:225		902 KAR 100:200
	201 KAR 036:030		902 KAR 004:120
194A.700(1)	902 KAR 020:048	211.185	908 KAR 002:300
194A.705(2)(c)	902 KAR 020:048	211.332	201 KAR 036:045
	902 KAR 020:086	211.334	201 KAR 036:045
196.030	501 KAR 016:310	211.336	201 KAR 036:045
196.035	501 KAR 016:310	211.338	201 KAR 036:045
196.280	505 KAR 001:420	211.689	902 KAR 004:120
196.070	501 KAR 016:310	211.842-211.852	902 KAR 100:019
196.180	501 KAR 045:310		902 KAR 100:040
197.045	505 KAR 001:420		902 KAR 100:050
198A.740 – 198A.750	202 KAR 002:020		902 KAR 100:058
199.011	922 KAR 001:360		902 KAR 100:065
	922 KAR 002:100		902 KAR 100:165
199.640 – 199.680	922 KAR 001:360		902 KAR 100:185
199.801	922 KAR 001:360		902 KAR 100:195
199.894	922 KAR 002:100		902 KAR 100:200
199.895	922 KAR 002:100	211.990	902 KAR 100:019
199.8951	922 KAR 002:100		902 KAR 100:040
199.896	922 KAR 002:100		902 KAR 100:050
199.897	922 KAR 002:100		902 KAR 100:058
199.898	922 KAR 002:100		902 KAR 100:065
199.8982	922 KAR 002:100		902 KAR 100:165
200.080-200.120	505 KAR 001:100		902 KAR 100:185
	505 KAR 001:110		902 KAR 100:195
	505 KAR 001:185		902 KAR 100:200
	505 KAR 001:200	212.132	105 KAR 001:148
	505 KAR 001:240	214.010	922 KAR 002:100
	505 KAR 001:250	214.036	922 KAR 002:100
	505 KAR 001:260	216.510	201 KAR 020:700
	505 KAR 001:270	216.2920	900 KAR 007:030
	505 KAR 001:280		900 KAR 007:040
	505 KAR 001:290	216.2925	900 KAR 007:030
	505 KAR 001:300	216.2927	900 KAR 007:030
	505 KAR 001:310		900 KAR 007:040
	505 KAR 001:320	216.2929	900 KAR 007:040
	505 KAR 001:330	216.510-216.525	902 KAR 020:048
	505 KAR 001:340		902 KAR 020:086
	505 KAR 001:350		902 KAR 020:300
	505 KAR 001:360	216.532	902 KAR 020:048
	505 KAR 001:370		902 KAR 020:086
	505 KAR 001:380		902 KAR 020:300
	505 KAR 001:390	216.535	902 KAR 020:300
	505 KAR 001:400	216.537	902 KAR 020:048
	505 KAR 001:410	216.540	902 KAR 020:048
	505 KAR 001:420		902 KAR 020:300
202A.011	907 KAR 001:044	216.543	902 KAR 020:300
202B.010	907 KAR 001:025	216.545	902 KAR 020:300
205.200	921 KAR 003:020	216.547	902 KAR 020:300
205.510	907 KAR 015:005	216.789	902 KAR 020:048
205.520	907 KAR 001:061		902 KAR 020:086
	907 KAR 003:066	216.793	902 KAR 020:048
	907 KAR 009:010		902 KAR 020:086
205.622	907 KAR 001:044	216A.080	902 KAR 020:048
205.712-205.795	921 KAR 001:410		902 KAR 020:086
205.720	921 KAR 001:420	216B.450	705 KAR 004:231
205.750	921 KAR 001:420	216B.455	705 KAR 004:231
205.755	921 KAR 001:420	217.215	201 KAR 002:165
205.795	921 KAR 001:420	218A.171-218A.172	201 KAR 020:057
205.2005	921 KAR 003:027	218A.202	201 KAR 020:057
205.8451	907 KAR 001:044	218A.205	902 KAR 020:300
	907 KAR 001:061		201 KAR 020:057
	907 KAR 015:005		201 KAR 020:215
209.030	902 KAR 020:048		201 KAR 002:050
	902 KAR 020:086	216B.010	900 KAR 006:075

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216B.010 – 216B.130	900 KAR 006:020	224.10-470	401 KAR 042:250
216B.015	900 KAR 006:075	224.20-100	401 KAR 051:010
	900 KAR 006:080	224.20-110	401 KAR 051:010
	902 KAR 100:185	224.20-120	401 KAR 051:010
216B.020	900 KAR 006:080	224.40	401 KAR 045:020
216B.040	900 KAR 006:075		401 KAR 045:025
216B.061	900 KAR 006:080		401 KAR 045:030
216B.062	900 KAR 006:075		401 KAR 045:040
216B.090	900 KAR 006:075		401 KAR 045:050
216B.095	900 KAR 006:075		401 KAR 045:080
216B.115	900 KAR 006:075		401 KAR 045:100
216B.178	900 KAR 006:020		401 KAR 045:105
216B.455	900 KAR 006:075		401 KAR 045:140
216B.990	900 KAR 006:075		401 KAR 045:160
	900 KAR 006:080		401 KAR 045:250
217.015	201 KAR 002:225	224.43-345	401 KAR 103:005
	902 KAR 045:190E		401 KAR 103:010
217.025	902 KAR 045:190E		401 KAR 103:020
217.035	902 KAR 045:190E		401 KAR 103:030
217.037	902 KAR 045:190E	224.46	401 KAR 045:020
217.0	902 KAR 045:190E		401 KAR 045:040
217.055	201 KAR 002:076		401 KAR 045:050
217.065	201 KAR 002:076		401 KAR 045:080
217.177	201 KAR 016:550		401 KAR 045:140
218A.205	201 KAR 002:020		401 KAR 045:160
	201 KAR 002:050	224.50	401 KAR 045:020
	201 KAR 020:056		401 KAR 045:025
	201 KAR 005:005		401 KAR 045:030
218A.010	201 KAR 020:065		401 KAR 045:040
218A.170	201 KAR 020:065		401 KAR 045:050
218B.010	201 KAR 020:067		401 KAR 045:080
218B.015	201 KAR 009:067		401 KAR 045:100
	201 KAR 020:067		401 KAR 045:140
218B.050	201 KAR 009:067		401 KAR 045:160
	201 KAR 020:067	224.50-760	401 KAR 045:010
218B.080	201 KAR 020:067	224.50-765	401 KAR 045:010
218B.202	201 KAR 009:067	224.60-110	401 KAR 042:250
218B.050	201 KAR 009:067	224.60-120	401 KAR 042:250
22.1-400	401 KAR 042:250	224.60-130	401 KAR 042:250
224.01	401 KAR 045:025	224.60-135	401 KAR 042:250
224.01-110	401 KAR 045:030	224.60-140	401 KAR 042:250
224.10	401 KAR 045:020	224.60-150	401 KAR 042:250
	401 KAR 045:030	224.70	401 KAR 045:020
	401 KAR 045:040		401 KAR 045:030
	401 KAR 045:050		401 KAR 045:105
	401 KAR 045:080	224.90	401 KAR 045:090
	401 KAR 045:100	224.99	401 KAR 045:020
	401 KAR 045:105		401 KAR 045:030
	401 KAR 045:140		401 KAR 045:040
	401 KAR 045:160		401 KAR 045:080
224.1-010	401 KAR 045:010		401 KAR 045:105
224.1-405	401 KAR 042:250		401 KAR 045:140
224.10	401 KAR 042:020		401 KAR 045:160
	401 KAR 045:025	229.011	201 KAR 027:005
	401 KAR 045:030	229.021	201 KAR 027:012
	401 KAR 045:040	229.025	201 KAR 027:008
	401 KAR 045:050		201 KAR 027:011
	401 KAR 045:080		201 KAR 027:016
	401 KAR 045:100	229.031	201 KAR 027:005
	401 KAR 045:105		201 KAR 027:011
	401 KAR 045:140		201 KAR 027:012
	401 KAR 045:160		201 KAR 027:016
224.10-100	401 KAR 103:005	229.035	201 KAR 027:008
	401 KAR 103:010	229.055	201 KAR 027:011
	401 KAR 103:020		201 KAR 027:016
	401 KAR 103:030	229.065	201 KAR 027:008
224.10-285	401 KAR 103:005	229.071	201 KAR 027:012
	401 KAR 103:010	229.081	201 KAR 027:012
	401 KAR 103:020	229.091	201 KAR 027:012
	401 KAR 103:030	229.111	201 KAR 027:005
224.10-410	401 KAR 042:250		201 KAR 027:011
224.10-420	401 KAR 042:250		201 KAR 027:016
224.10-430	401 KAR 042:250	229.131	201 KAR 027:005
224.10-440	401 KAR 042:250		201 KAR 027:011

KRS SECTION	REGULATION	KRS SECTION	REGULATION
229.155	201 KAR 027:016	260.850	902 KAR 045:190E
	201 KAR 027:005	273	922 KAR 001:580
	201 KAR 027:011	273.2	921 KAR 003:095
	201 KAR 027:016	273.10	921 KAR 003:095
229.171	201 KAR 027:005	278.700-716	401 KAR 103:005
	201 KAR 027:008		401 KAR 103:010
	201 KAR 027:011		401 KAR 103:020
	201 KAR 027:012		401 KAR 103:030
	201 KAR 027:016	281.010	907 KAR 003:066
230	809 KAR 001:002	281.605(9)	907 KAR 003:066
	809 KAR 010:001	281.635(5)	907 KAR 003:066
	809 KAR 010:002	281.872	907 KAR 003:066
	809 KAR 010:002E	281.875	907 KAR 003:066
	809 KAR 010:003	292.330	808 KAR 010:501
	809 KAR 010:003E	292.410	808 KAR 010:501
	809 KAR 010:004	292.411	808 KAR 010:501
	809 KAR 010:004E	292.412	808 KAR 010:501
	809 KAR 010:005	301	201 KAR 016:550
	809 KAR 010:006	302.32	921 KAR 001:420
	809 KAR 010:006E	302.38	921 KAR 001:420
	809 KAR 010:007	302.51-302.54	921 KAR 001:420
	809 KAR 010:008	303.72	921 KAR 001:420
230.210	810 KAR 004:001	304.1-050	806 KAR 017:290
230.215	810 KAR 002:020		806 KAR 017:590
	810 KAR 002:070	304.2-100	806 KAR 017:290
	810 KAR 003:010	304.2-230	806 KAR 017:290
	810 KAR 004:010	304.2-310	806 KAR 017:290
	810 KAR 004:030	304.9-020	806 KAR 009:400
	810 KAR 004:040		806 KAR 017:590
	810 KAR 004:070	304.9-055	806 KAR 017:590
230.240	810 KAR 002:020	304.9-430	806 KAR 009:400
	810 KAR 004:030	304.9-433	806 KAR 009:400
230.260	810 KAR 002:020	304.9-435	806 KAR 009:400
	810 KAR 002:070	304.9-440	806 KAR 009:400
	810 KAR 002:100	304.14-135	900 KAR 007:030
	810 KAR 003:010	304.17A-005	806 KAR 017:290
	810 KAR 004:030	304.17A-1631	806 KAR 017:290
	810 KAR 004:040	304.17A-168	806 KAR 017:290
	810 KAR 004:070	304.17A-505	806 KAR 017:290
230.280	810 KAR 003:010	304.17A-535	806 KAR 017:290
230.290	810 KAR 003:010	304.17A-600	806 KAR 017:290
	810 KAR 004:030	304.17A-607	806 KAR 017:290
230.300	810 KAR 003:010	304.17A-617	806 KAR 017:290
230.310	810 KAR 004:030	304.17A-621 – 304.17A-631	806 KAR 017:290
230.320	810 KAR 004:030	304.17A-732	806 KAR 017:590
230.811	810 KAR 003:010		907 KAR 015:005
230.817	810 KAR 003:010	309.080	908 KAR 002:300
237.110	301 KAR 002:172	309.130	907 KAR 015:005
	921 KAR 001:410		908 KAR 002:300
246.030	302 KAR 022:150	309.460	907 KAR 003:310
247.232	302 KAR 016:020	309.462	907 KAR 003:310
	302 KAR 016:030	309.464	907 KAR 003:310
247.233	302 KAR 016:072	310.021	902 KAR 020:048
	302 KAR 016:111	310.031	902 KAR 020:048
247.234	301 KAR 001:410		902 KAR 020:086
	302 KAR 016:020	311	201 KAR 027:008
	302 KAR 016:030	311.571	908 KAR 002:300
	302 KAR 016:050	311.592	201 KAR 009:067
247.236	302 KAR 016:020	311.646	922 KAR 002:100
	302 KAR 016:030	311.840	907 KAR 015:005
251.355	302 KAR 033:010	311.840 – 311.862	908 KAR 002:300
251.375	302 KAR 033:010	311A.025	202 KAR 007:410
251.380	302 KAR 033:010	311A.030	202 KAR 007:550
251.470	302 KAR 033:010		202 KAR 007:555
251.990	302 KAR 033:010	311A.050-311A.100	202 KAR 007:410
257.020	302 KAR 022:150	311A.120-311A.135	202 KAR 007:410
257.030	302 KAR 022:150	311A.142	202 KAR 007:410
257.080	201 KAR 016:701	311A.145	2021 KAR 007:030
	302 KAR 022:150	311A.170	202 KAR 007:410
257.160	201 KAR 016:560	311A.180	202 KAR 007:550
257.990	302 KAR 022:150	311A.185	202 KAR 007:410
258	201 KAR 016:550	311A.190	202 KAR 007:410
258.043	201 KAR 016:701		202 KAR 007:550
258.065	201 KAR 016:701		202 KAR 007:555

KRS SECTION	REGULATION	KRS SECTION	REGULATION
311.595	201 KAR 009:067		201 KAR 002:050
311.599	201 KAR 009:067		201 KAR 002:076
314.011	201 KAR 020:056		201 KAR 002:205
	201 KAR 020:057		201 KAR 002:225
	201 KAR 020:065		201 KAR 002:320
	201 KAR 020:067		201 KAR 002:340
	201 KAR 020:215		201 KAR 002:390
	201 KAR 020:220	315.300	201 KAR 002:205
	907 KAR 015:005	315.335	201 KAR 002:205
	922 KAR 002:100	315.350	201 KAR 002:105
314.041	201 KAR 020:225	315.400	201 KAR 002:105
314.042	908 KAR 002:300		201 KAR 002:320
	201 KAR 020:057		201 KAR 002:390
	201 KAR 020:065	315.402	201 KAR 002:050
	201 KAR 020:067		201 KAR 002:105
	201 KAR 020:215	315.404	201 KAR 002:105
	201 KAR 020:225		201 KAR 002:320
314.051	201 KAR 020:225	315.406	201 KAR 002:105
314.071	201 KAR 020:225	315.408	201 KAR 002:105
314.073	201 KAR 020:215	315.410	201 KAR 002:105
	201 KAR 020:220	315.4102	201 KAR 002:390
	201 KAR 020:225	315.4104	201 KAR 002:390
314.075	201 KAR 020:225	315.4106	201 KAR 002:390
314.085	201 KAR 020:067	315.4108	201 KAR 002:390
	201 KAR 020:225	315.4110	201 KAR 002:390
314.089	201 KAR 020:067	315.412	201 KAR 002:105
314.091	201 KAR 020:056	319.050	908 KAR 002:300
	201 KAR 020:057	319.053	907 KAR 015:005
	201 KAR 020:091	319.056	907 KAR 015:005
	201 KAR 020:225		908 KAR 002:300
314.103	201 KAR 020:056	319.064	907 KAR 015:005
	201 KAR 020:225		908 KAR 002:300
314.109	201 KAR 020:056	319C.010	907 KAR 015:005
	201 KAR 020:225		908 KAR 002:300
314.131	201 KAR 020:220	320	809 KAR 010:001E
314.161	201 KAR 020:056	320.220	201 KAR 005:005
314.175	201 KAR 020:056	320.250	201 KAR 005:005
314.193	201 KAR 020:057	320.270	201 KAR 005:005
314.195	201 KAR 020:057	321	302 KAR 022:150
314.400 – 314.414	201 KAR 020:620	321.175	201 KAR 016:701
314.991	201 KAR 020:215		201 KAR 016:702
315.010	201 KAR 002:040		201 KAR 016:750
	201 KAR 002:105	321.181	201 KAR 016:701
	201 KAR 002:225		201 KAR 016:552
	201 KAR 002:320	321.185	201 KAR 016:701
	201 KAR 002:340	321.187	201 KAR 016:701
315.020	201 KAR 002:040	321.188	201 KAR 016:701
	201 KAR 002:076	321.190	201 KAR 016:510
	201 KAR 002:205		201 KAR 016:512
	201 KAR 002:225		201 KAR 016:501
	201 KAR 002:320		201 KAR 016:051
	201 KAR 002:340		201 KAR 016:702
315.035	201 KAR 002:050		201 KAR 016:750
	201 KAR 002:076	321.193	201 KAR 016:702
	201 KAR 002:225		201 KAR 016:510
	201 KAR 002:240	321.200	201 KAR 016:701
	201 KAR 002:340		201 KAR 016:514
	201 KAR 002:050	321.201	201 KAR 016:510
	902 KAR 020:048	321.211	201 KAR 016:510
	902 KAR 020:086		201 KAR 016:510
315.036	201 KAR 002:320	321.207	201 KAR 016:514
315.0351	201 KAR 002:050		201 KAR 016:550
	201 KAR 002:076		201 KAR 016:552
	201 KAR 002:205		201 KAR 016:560
315.036	201 KAR 002:050	321.208	201 KAR 016:514
315.050	201 KAR 002:020	321.235	201 KAR 016:512
	201 KAR 002:040		201 KAR 016:516
	201 KAR 002:050		201 KAR 016:552
315.060	201 KAR 002:050		201 KAR 016:510
315.110	201 KAR 002:050		201 KAR 016:514
315.120	201 KAR 002:050	321.351	201 KAR 016:550
315.121	201 KAR 002:105		201 KAR 016:552
315.191	105 KAR 001:457		201 KAR 016:560
	201 KAR 002:040	321.441	201 KAR 016:702

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 016:750	431.17	907 KAR 001:044
	201 KAR 016:512	431.52	907 KAR 001:044
321.442	201 KAR 016:512	431.213-431.270	501 KAR 045:310
321.443	201 KAR 016:702	431 Subpart F	907 KAR 001:044
	201 KAR 016:750	434.840-434.860	907 KAR 001:044
325.261	201 KAR 001:190	438.305	902 KAR 045:190E
325.270	201 KAR 001:190	439.265	505 KAR 001:420
327.040	201 KAR 022:053	439.267	505 KAR 001:420
327.070	201 KAR 022:053	439.600	505 KAR 001:310
327.300	201 KAR 022:170	446.440	202 KAR 007:410
333.030	902 KAR 020:048	508.125	902 KAR 045:070
335B	201 KAR 016:560	527.070	922 KAR 002:100
	201 KAR 036:070	600-645	505 KAR 001:100
	201 KAR 036:072		505 KAR 001:110
335.070	201 KAR 023:055		505 KAR 001:185
335.080	201 KAR 023:160		505 KAR 001:200
	907 KAR 015:005		505 KAR 001:240
	908 KAR 002:300		505 KAR 001:250
335.090	201 KAR 023:160		505 KAR 001:260
335.100	201 KAR 023:160		505 KAR 001:270
	907 KAR 015:005		505 KAR 001:280
	908 KAR 002:300		505 KAR 001:290
335.158	201 KAR 023:170		505 KAR 001:300
335.300	907 KAR 015:005		505 KAR 001:310
	908 KAR 002:300		505 KAR 001:320
335.500	907 KAR 015:005		505 KAR 001:330
	908 KAR 002:300		505 KAR 001:340
	201 KAR 036:060		505 KAR 001:350
	201 KAR 036:065		505 KAR 001:360
	201 KAR 036:070		505 KAR 001:370
335.500-335.599	201 KAR 036:030		505 KAR 001:380
335.505	201 KAR 036:045		505 KAR 001:390
	201 KAR 036:060		505 KAR 001:400
	201 KAR 036:065		505 KAR 001:410
335.515	201 KAR 036:072		505 KAR 001:420
335.525	201 KAR 036:060	600.020	922 KAR 001:580
	201 KAR 036:065		922 KAR 001:360
	201 KAR 036:070	605.110	505 KAR 001:260
335.527	201 KAR 036:070	620.020	201 KAR 020:215
335.535	201 KAR 036:005		201 KAR 020:620
	201 KAR 036:072		922 KAR 001:360
	201 KAR 036:535		922 KAR 002:100
335.540	201 KAR 036:040	620.020(8)	922 KAR 002:100
	201 KAR 036:050		922 KAR 001:580
335.545	201 KAR 036:050	620.030	902 KAR 020:086
	201 KAR 036:090		922 KAR 002:100
342.640	902 KAR 020:500	620.045	922 KAR 001:580
344.010	104 KAR 001:080	620.050	922 KAR 001:580
344.010-344.500	104 KAR 001:050	7 C.F.R.	921 KAR 003:020
344.030	101 KAR 001:365		921 KAR 003:095
344.040	104 KAR 001:040		921 KAR 003:027
344.050	104 KAR 001:040		921 KAR 003:100
	104 KAR 001:100		922 KAR 002:100
344.060	104 KAR 001:040	9 C.F.R.	302 KAR 022:150
	104 KAR 001:100	10 C.F.R.	902 KAR 100:040
344.070	104 KAR 001:040		902 KAR 100:050
344.120	104 KAR 001:100		902 KAR 100:058
344.130	104 KAR 001:100		902 KAR 100:065
344.190	104 KAR 001:010		902 KAR 100:165
344.360-344.385	104 KAR 001:080		902 KAR 100:185
344.500	104 KAR 001:100		902 KAR 100:195
344.600-344.680	104 KAR 001:080		902 KAR 100:200
344.990	104 KAR 001:050	16 C.F.R.	302 KAR 016:071
363.900-363.908	302 KAR 016:071		922 KAR 002:100
369.101-369.120	907 KAR 001:044	21 C.F.R.	105 KAR 001:457
387.010	902 KAR 045:065		902 KAR 020:048
	905 KAR 045:070		902 KAR 020:086
400.203	907 KAR 001:044	28 C.F.R.	104 KAR 001:100
405.060	921 KAR 001:410		902 KAR 045:065
405.520	921 KAR 001:420		902 KAR 045:070
407.5101	921 KAR 001:420	29 C.F.R.	104 KAR 001:040
415.208	907 KAR 001:044		104 KAR 001:050
422.317	907 KAR 001:044		202 KAR 007:550
424.260	702 KAR 003:340		202 KAR 007:555

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 020:048		030 KAR 010:030
	902 KAR 020:086		030 KAR 010:040
	902 KAR 045:065		030 KAR 010:050
34 C.F.R.	505 KAR 001:185		030 KAR 010:060
	902 KAR 020:086		030 KAR 010:070
	902 KAR 045:070		030 KAR 010:080
31 C.F.R.	921 KAR 001:410		030 KAR 010:090
40 C.F.R.	302 KAR 016:071		030 KAR 010:100
	401 KAR 042:250		030 KAR 010:110
	401 KAR 051:010		030 KAR 010:120
42 C.F.R.	902 KAR 020:086	Ky Acts ch 173 (2005)	907 KAR 001:061
	902 KAR 020:300	Ky Act ch 335	401 KAR 045:080
	907 KAR 001:025		
	907 KAR 001:044		
	907 KAR 003:066		
	907 KAR 015:005		
45 C.F.R.	902 KAR 020:048		
	902 KAR 020:086		
	907 KAR 001:044		
	907 KAR 001:061		
	921 KAR 001:410		
	921 KAR 001:420		
	921 KAR 003:027		
	922 KAR 002:100		
49 C.F.R.	922 KAR 002:100		
50 C.F.R.	401 KAR 045:030		
7 U.S.C.	921 KAR 003:020		
	401 KAR 045:100		
	921 KAR 003:027		
10 U.S.C.	106 KAR 004:020		
15 U.S.C.	201 KAR 027:008		
	201 KAR 027:011		
	921 KAR 001:410		
16 U.S.C. 661,1273,1531	401 KAR 045:030		
20 U.S.C.	705 KAR 004:231		
	702 KAR 007:065		
	921 KAR 003:027		
	922 KAR 002:100		
21 U.S.C.	201 KAR 002:076		
	921 KAR 003:027		
21 U.S.C. 823	201 KAR 020:065		
26 U.S.C.	105 KAR 001:457		
26 U.S.C. 501(c)	908 KAR 001:410		
26 U.S.C. 501(c)(3)	301 KAR 005:200		
29 U.S.C.	907 KAR 015:005		
	921 KAR 003:020		
38 U.S.C.	921 KAR 003:020		
42 U.S.C.	104 KAR 001:040		
	401 KAR 051:010		
	705 KAR 004:231		
	902 KAR 020:048		
	902 KAR 020:086		
	902 KAR 100:040		
	902 KAR 100:050		
	902 KAR 100:065		
	902 KAR 100:185		
	902 KAR 100:195		
	902 KAR 100:200		
	907 KAR 001:025		
	907 KAR 001:044		
	907 KAR 001:061		
	907 KAR 003:066		
	908 KAR 001:410		
	921 KAR 003:020		
	921 KAR 001:410		
	921 KAR 001:420		
	921 KAR 003:027		
	922 KAR 001:360		
	922 KAR 002:100		
	922 KAR 002:165		
42 U.S.C. 1395	201 KAR 020:065		
Ky. Act ch. 78 (2023)	902 KAR 045:190E		
Ky Acts ch. 172	030 KAR 010:010		
	030 KAR 010:020		

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
013 KAR 002:060	11-20-2023	Remain in Effect without Amendment
103 KAR 008:160	11-13-2023	Remain in Effect without Amendment
201 KAR 002:045	11-6-2023	To be amended, filing deadline 05-06-2025
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 9-6-2023
201 KAR 043:110	10-07-2023	Remain in Effect without Amendment
201 KAR 046:090	11-08-2023	Remain in Effect without Amendment
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
705 KAR 004:231	10-11-2023	To be amended, In process
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
921 KAR 001:410	10-11-2023	To be amended, in process, filed 10-9-2023
921 KAR 001:420	10-11-2023	To be amended, in process, filed 8-14-2023
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
703 KAR 005:240	07-20-2023		
705 KAR 004:041	08-23-2023		
806 KAR 009:025	08-11-2023		
806 KAR 012:140	06-20-2023		
900 KAR 006:125	08-29-2023		

SUBJECT INDEX

ACCOUNTANCY

Examination sections, applications, and procedures; 201 KAR 001:190
License application; 201 KAR 001:050

AIR QUALITY

National Ambient Air Quality Standards
Attainment status designations; 401 KAR 051:010

AGRICULTURE

Amusement Rides
Business registration and permit; 302 KAR 016:010
Inspection; 302 KAR 016:020
Notification of occurrence; 302 KAR 016:072
Operation; 302 KAR 016:020
Permits; violations, civil penalties, revocations; 302 KAR 016:111
Qualification and registration of persons designated to perform amusement safety inspections; 302 KAR 016:150
Repeal of 302 KAR 016:070; 302 KAR 016:071
Section stop order; 302 KAR 016:030
Violations not immediately correctable; 302 KAR 016:030
General
Access to public records of the Kentucky Department of Agriculture; 302 KAR 002:010
Grain
Dealers; 302 KAR 033:010
Warehouse operators; 302 KAR 033:010
Livestock, Fish, and Poultry
Cervids; 302 KAR 022:150

ATHLETICS

See also headings for specific sports
School Terms, Attendance and Operation
Agent designation to manage middle and high school interscholastic athletics; 702 KAR 007:065

BEHAVIORAL HEALTH

Behavioral Health
Problem gambling assistance account; 908 KAR 002:300
Substance Abuse
Recovery housing; 908 KAR 001:410

BOARDS AND COMMISSIONS

See also Occupations and Professions
See listing below for other possible, specific subject headings:
Accountancy; 201 KAR Chapter 001
Alcohol and Drug Counselors; 201 KAR Chapter 022
Applied Behavior Analysis; 201 KAR Chapter 043
Architects; 201 KAR Chapter 019
Barbering; 201 KAR Chapter 014
Chiropractic Examiners; 201 KAR Chapter 021
Dentistry; 201 KAR Chapter 008
Dietitians and Nutritionists; 201 KAR Chapter 033
Durable Medical Equipment; 201 KAR Chapter 047
Embalmers and Funeral Directors; 201 KAR Chapter 015
Examiners of Psychology; 201 KAR Chapter 026
Geologists, Professional; 201 KAR Chapter 031
Licensed Professionals; 201 KAR Chapter 036
Long-Term Care Administrators; 201 KAR Chapter 006
Massage Therapy; 201 KAR Chapter 042
Medical Imaging and Radiation Therapy; 201 KAR Chapter 046
Medical Licensure; 201 KAR Chapter 009
Nursing; 201 KAR Chapter 020
Optometric Examiners; 201 KAR Chapter 005
Pharmacy; 201 KAR Chapter 002
Physical Therapy; 201 KAR Chapter 022
Real Estate Commission; 201 KAR Chapter 011
Speech-Language Pathology and Audiology; 201 KAR Chapter 017
Social Work; 201 KAR Chapter 023
Veterinary Examiners; 201 KAR Chapter 016

BOXING AND WRESTLING

Definitions; 201 KAR 027:005
Fees; 201 KAR 027:008
License requirements; 201 KAR 027:008
Shows, exhibitions:
Boxing; 201 KAR 027:011
Kickboxing; 201 KAR 027:011
Mixed martial arts; 201 KAR 027:016
Wrestling; 201 KAR 027:012

CANNABIS/CANNABINOIDS

Hemp-derived products; packaging/labelling; 902 KAR 045:190E

CERTIFICATE OF NEED

Emergency circumstances; 900 KAR 006:080
Nonsubstantive review; 900 KAR 006:075

CHILD SUPPORT

Child support collection and enforcement; 921 KAR 001:410
Child support distribution; 921 KAR 004:420

CHILD WELFARE

Advocacy centers; standards; 922 KAR 001:580
Child care; private placement; 922 KAR 001:360

COMMUNITY BASED SERVICES

Aging Services
Child Welfare (*922 KAR Chapter 001*)
Child Support (*922 KAR Chapter 001*)
Daycare (*922 KAR Chapter 002*)
K-TAP, Kentucky Works, Welfare to Work, State Supplementation (*921 KAR Chapter 002*)
Supplemental Nutrition Assistance Program (*921 KAR Chapter 003*)

DAYCARE

Certification of family child-care homes; 922 KAR 002:100
Employee Child Care Assistance Partnership; 922 KAR 002:165

EDUCATION

See also: Athletics
Higher Education Assistance Authority (KAR Title 011)
Postsecondary Education (KAR Title 013)

Board of Education
Approval of school district lease agreements; 702 KAR 003:340
Pupil attendance; 702 KAR 007:125
Office of Chief State School Officer
Use of local monies to reduce unmet technology need; 701 KAR 005:110
Office of District Support Services
Liability insurance; 702 KAR 003:330
Office of Special Instructional Services
General program standards for secondary career and technical education programs; 705 KAR 004:231

EDUCATION PROFESSIONAL STANDARDS

Educator Preparation
Literacy certification programs requirements; 016 KAR 005:060
Teaching Certificates
Interim certificate; 016 KAR 002:240

ELECTIONS

See also: Election Finance (032 KAR Chapter 001)
State Board of Elections (Title 031)

ELECTION FINANCE

Practice and Procedure
Advisory opinions; 032 KAR 002:060
Complaints; internally-generated matters; 032 KAR 002:020
Conciliation; 032 KAR 002:050
General provisions; 032 KAR 002:020
Investigatory procedures; 032 KAR 002:040
Records requests; 032 KAR 002:230
Repeal of 032 KAR 002:220; 032 KAR 002:221
Reports and Forms

SUBJECT INDEX

Campaign finance statements; 032 KAR 1:030
Campaign treasurer; 032 KAR 1:020
Political organization registration; 032 KAR 1:050
Repeal of 032 KAR 001:045 & 070; 032 KAR 001:046
Spending intent; 032 KAR 1:020

EMERGENCY MEDICAL SERVICES

Advanced practice paramedics; 202 KAR 007:410
Equipment standards; 202 KAR 007:550
Fees of the board; 202 KAR 007:030
Ground agencies; 202 KAR 007:555
Vehicle standards; 202 KAR 007:550

ENVIRONMENTAL PROTECTION

Merchant Electric Generating Facilities (MEGF)
Decommissioning standards; 401 KAR 103:020
Definitions related to 401 KAR Chapter 103; 401 KAR 103:005
Financial requirements; 401 KAR 103:030
Notification and transfer procedures for merchant electric generating facilities; 401 KAR 103:010
Underground Storage Tanks
Petroleum Storage Tank Environmental Assurance Fund reimbursement; 401 KAR 042:250
Special Waste
Conditions applicable to all special waste permits; 401 KAR 045:140
Definitions for 401 KAR Chapter 045; 401 KAR 045:010
Financial requirements and bonds for special waste facilities; 401 KAR 045:080
Land application of biosolids; 401 KAR 045:105
Landfarming and composting of special waste; 401 KAR 045:100
Modification, transfer or revocation of special waste permits; 401 KAR 045:040
Obtaining a special waste site or facility permit; 401 KAR 045:030
Permit review and determination timetables; 401 KAR 045:025
Public information procedures for special waste site or facility permits; 401 KAR 045:050
Special waste permit fees; 401 KAR 042:250
Surface and groundwater monitoring and corrective action for special waste sites or facilities; 401 KAR 045:160
Types of special waste permits; 401 KAR 045:020

FINANCIAL INSTITUTIONS

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; 808 KAR 010:501

FISH AND WILDLIFE RESOURCES

Fish
Aquatic species, prohibited; 301 KAR 001:122
Aquatic organisms; propagation; 301 KAR 001:115
Definitions; 301 KAR 001:001
Fishing methods
Non-traditional; 301 KAR 001:410
Traditional; 301 KAR 001:201
Transportation of fish; 301 KAR 001:125
Game
Commercial guide license; 301 KAR 002:030
Deer hunting seasons, zones, requirements; 301 KAR 002:172
Holding and intrastate transportation of captive cervids; 301 KAR 002:083
Waterfowl hunting requirements on public lands; 301 KAR 002:222
Licensing
Definitions for 301 Chapter 005; 301 KAR 005:001
License agent applications and agreements; 301 KAR 005:010
License agent requirements and responsibilities; 301 KAR 005:020
Special commission permits for incorporated nonprofit wildlife conservation organizations; 301 KAR 005:200

Wildlife

Repeal of 301 KAR 004:020 and 301 KAR 004:050; 301 KAR 004:021

FOOD AND COSMETICS

Body piercing and ear piercing; 902 KAR 045:070
Hemp-derived products; packaging/labelling; 902 KAR 045:190E
Tattooing; 902 KAR 045:065

FOOD STAMPS

See Supplemental Nutritional Assistance Program, 921 KAR Chapter 003

GAMBLING

See Sports Wagering

HEALTH AND FAMILY SERVICES

Behavioral Health; KAR Title 908
Certificate of Need; 900 KAR Chapter 6
Medicaid Services; KAR Title 907
State Health Plan; 900 KAR Chapter 5

HEMP

See cannabis/cannabinoids

HIGHER EDUCATION ASSISTANCE AUTHORITY

Grant Programs
Definitions for 011 KAR Chapter 005; 011 KAR 005:001
Kentucky Educational Excellence Scholarship Program
Award determination procedure; 11 KAR 015:040
Qualified workforce training program; 11 KAR 015:110
Registered apprenticeship program; 11 KAR 015:110
Teacher Scholarship Loan Program
Teacher scholarships; 011 KAR 008:030

HORSE RACING COMMISSION

See also: Sports Wagering (KAR Title 809)

Flat and Steeplechase Racing
Declarations; 810 KAR 004:030
Definitions; 810 KAR 004:001
Entries; 810 KAR 004:030
Horses; 810 KAR 004:010
Jockeys and apprentices; 810 KAR 004:070
Owners; 810 KAR 004:090
Running of the race; 810 KAR 004:040
Subscriptions; 810 KAR 004:030
General
Self exclusion; 810 KAR 002:100
Thoroughbred and flat racing;
Associations; 810 KAR 002:070
Officials; 810 KAR 002:020
Licensing
Racing associations; 810 KAR 003:010

HOUSING

Housing Corporation
Rural Housing Trust Fund; 202 KAR 002:020

HUMAN RIGHTS

Advertising employment opportunities; 104 KAR 001:040
Advertising licensing opportunities; 104 KAR 001:040
Equal employment opportunities; 104 KAR 001:050
Fair housing; 104 KAR 001:080
Nondiscrimination on the basis of disability; 104 KAR 001:100
Notices and pamphlets; 104 KAR 001:010

INSPECTOR GENERAL (CHFS)

Health Services and Facilities
Operation and services; 902 KAR 020:300
Operation and services; intermediate care facilities for individuals with intellectual disabilities; 902 KAR 020:086
Operation and services; nursing homes; 902 KAR 020:048

SUBJECT INDEX

INSURANCE

Agents, Consultants, Solicitors and Adjusters
Public adjuster filings; 806 KAR 009:400
Health Insurance Contracts
Annual report on providers prescribing medication for addiction treatment; 806 KAR 017:590
Independent External Review Program; 806 KAR 017:290

JUSTICE AND PUBLIC SAFETY

Internal Investigations Branch
500 KAR 013:020; Internal Investigations Branch
Juvenile Justice; 505 KAR Chapter 001

JUVENILE JUSTICE

Child Welfare
Activity fund account; 505 KAR 001:390
Allowance; 505 KAR 001:290
Behavior management; 505 KAR 001:400
Cell entry teams; 505 KAR 001:200
Definitions; 505 KAR 001:010
Dietary services; 505 KAR 001:240
Drug screening and testing; 505 KAR 001:250
Emergency response teams; training; 505 KAR 001:200
Furloughs; 505 KAR 001:310
Grievances; 505 KAR 001:270
Grooming; 505 KAR 1:280
Hair; 505 KAR 1:280
Intake and orientation; 505 KAR 001:110
Isolation; 505 KAR 001:410
Leave; 505 KAR 001:310
Library services; 505 KAR 001:320
Mail; 505 KAR 001:380
Personal property; 505 KAR 001:330
Policies and Procedures Manual:
Detention Services; 505 KAR 001:140
Health and Safety Services; 505 KAR 001:120
Progressive discipline; 505 KAR 001:400
Protective custody; 505 KAR 001:410
Records and information; 505 KAR 001:300
Recreation; 505 KAR 001:340
Religious practice; 505 KAR 001:350
Releases; 505 KAR 001:310
Searches; 505 KAR 001:360
Telephone use; 505 KAR 001:380
Treatment; 505 KAR 001:370
Visiting; 505 KAR 001:380
Work detail; 505 KAR 001:290
Youthful offenders; 505 KAR 001:420

KENTUCKY

All administrative regulations in this publication relate to Kentucky. If an agency has "Kentucky" at the beginning of its proper name, please skip over "Kentucky" and go to the second word of the proper name for that agency's heading.

LAW ENFORCEMENT

Law Enforcement Council
Court security officer professional standards; 503 KAR 001:140
Peace officer professional standards; 503 KAR 001:140
Telecommunicator professional standards; 503 KAR 001:140

LICENSED PROFESSIONAL COUNSELORS

Administrative hearings for denials and revocation of probated sanction; 201 KAR 036:090
Application, education, and examination requirements; 201 KAR 036:070
Code of ethics; 201 KAR 036:040
Complaint management process; 201 KAR 036:050
Continuing education requirements; 201 KAR 036:030
Definitions for 201 KAR Chapter 036; 201 KAR 036:005
Distance counseling; 201 KAR 036:045
Licensed professional clinical counselor supervisor; 201 KAR 036:065
Qualifying experience under supervision; 201 KAR 036:060
Reciprocity requirements for applicants licensed or certified in

another state; 201 KAR 036:072
Renewal, late renewal, and reinstatement of license; 201 KAR 036:075

MATERNAL AND CHILD HEALTH

Health Access Nurturing Development Services (HANDS) Program; 902 KAR 004:120

MEDICAID SERVICES

Behavioral Health
Definitions for 907 KAR Chapter 015; 907 KAR 015:005
Medicaid Services
Coverage provisions and requirements regarding community mental health center behavioral health services; 907 KAR 001:044
Payments for ambulance transportation; 907 KAR 001:061
Payments for services provided by various facilities; 907 KAR 001:025
Payments and Services
Community Health Worker services and reimbursement; 907 KAR 003:310
Nonemergency medical transportation waiver services and payments; 907 KAR 003:066
Psychiatric Residential Treatment Facility Services and Reimbursement
Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services; 907 KAR 009:010

MEDICAL LICENSURE

Professional standards and procedures for medicinal cannabis practitioners; 201 KAR 009:067

MIDWIVES

See Nursing (201 KAR Chapter 020)

MILITARY AFFAIRS

Military Burial Honors Program
Honor Guard and trust fund; 106 KAR 004:020

NURSING

Advanced practice registered nurse licensure and certification requirements; 201 KAR 020:056
Continuing competency requirements; 201 KAR 020:215
Professional standards for medicinal cannabis; 201 KAR 020:067
Midwives; licensing requirements; 201 KAR 020:620
Nursing continuing education provider approval; 201 KAR 020:220
Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder; 201 KAR 02:065
Reinstatement of license; 201 KAR 020:225
Scope and standards of practice of advanced practice registered nurses; 201 KAR 020:057

OFFICE OF DATA ANALYTICS

Data Reporting and Public Use Data Sets
Data reporting by health care providers; 900 KAR 007:030
Release of public data sets for health facility and services data; 900 KAR 007:040

OPTOMETRIC EXAMINERS

Telehealth; 201 KAR 005:055
Fees, fines, and forms; 201 KAR 005:005

PERSONNEL

Board
Appeal and hearing procedures; 101 KAR 001:365
Personnel Cabinet, Classified
2024 Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210

PHARMACY

Compounding; 201 KAR 002:076

SUBJECT INDEX

Examination; 201 KAR 002:020
Fees; licenses and permits; 201 KAR 002:050
Manufacturers requirements for various; 201 KAR 002:320
Pharmacist-in-charge; 201 KAR 002:205
Registration of pharmacist interns; 201 KAR 002:040
Special limited pharmacy permit
Charitable; 201 KAR 002:240
Clinical practice; 201 KAR 002:340
Medical gas; 201 KAR 002:225
Third-party logistics providers; requirements; 201 KAR 002:390
Transfer of prescription information; 201 KAR 002:16
Wholesalers; requirements for various; 201 KAR 002:105

PHYSICAL THERAPY

Compact Commission; 201 KAR 022:170

POSTSECONDARY EDUCATION

Healthcare

Program incentives; 013 KAR 005:020
Training scholarships; 013 KAR 005:010

PUBLIC HEALTH

Food and Cosmetics (*902 KAR Chapter 45*)
Maternal and Child Health (*902 Chapter 004*)
Radiology (*902 KAR Chapter 100*)

PUBLIC PENSIONS

General Rules

Administrative hearing; 105 KAR 001:215
Federal tax withholding or direct rollover of eligible distributions;
105 KAR 001:270
In-Line-of-Duty Survivor Benefits; 105 KAR 001:457
Merged, split, new, separate, or separated employers or entities;
105 KAR 001:148

RADIOLOGY

Employees; notices, reports, instructions; 902 KAR 100:165
Irradiators; licensing and radiation safety requirements; 902
KAR 100:200

Licenses:

General; 902 KAR 100:050
Special nuclear material; 902 KAR 100:195
Specific products; 902 KAR 100:058
Specific; 902 KAR 100:040
Reciprocal recognition; 902 KAR 100:065
Protection from radioactive materials standards; 902 KAR
100:185
Protection standards; 902 KAR 100:019

RETIREMENT

See *Public Pensions (KAR Title 105)*
Teachers' Retirement System (KAR Title 102)

SECRETARY OF STATE

Address Confidentiality Program

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

Safe at Home Program

Age of majority; 030 KAR 010:100
Appeal; 030 KAR 010:040
Application; 030 KAR 010:020
Application assistant training, designation; 030 KAR 010:050
Cancellation; 030 KAR 010:040
Certification; 030 KAR 010:020
Definitions; 030 KAR 010:010
Notification:
Expiration; 030 KAR 010:030
Recertification; 030 KAR 010:030
Participant privileges; 030 KAR 010:090
Recognition of certification in other state; 030 KAR 010:120
Release of information to:
Criminal justice officials or agencies; 030 KAR 010:060
Schools (enrollment and records); 030 KAR 010:070
Service of process; 030 KAR 010:110
Substitute address; 030 KAR 010:080

Withdrawal; 030 KAR 010:040

SOCIAL WORK

Code of ethical standards and standards of practice for physical
therapists and physical therapist assistants; 201 KAR
022:053.

Inactive status; 201 KAR 23:055

Telehealth; 201 KAR 023:170

Temporary permission to practice; 201 KAR 023:160

SPORTS WAGERING

Licensing

Occupational licenses; 809 KAR 001:003

Service provider licensing; 809 KAR 001:002

Technical Criteria

Accounts; 809 KAR 010:004

Advertising; responsible; 809 KAR 010:007

Audit and internal control standards; 809 KAR 010:006

Disciplinary actions; hearings; 809 KAR 010:008

Gaming; responsible; 809 KAR 010:007

General provisions; 809 KAR 010:001

Licensed premises; 809 KAR 010:005

Standards; 809 KAR 010:002

Technical requirements and oversight; 809 KAR 010:003

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Elderly Simplified Application Project (ESAP); 921 KAR 003:095

Financial requirements; 921 KAR 003:020

Technical requirements; 921 KAR 003:027

Transitional benefit alternative; 921 KAR 003:100

STATE BOARD OF ELECTIONS

Consolidation of precincts and precinct election officers; 031
KAR 004:196

STATE HEALTH PLAN

Facilities and services, 900 KAR 005:020

TRANSPORTATION

Highways

Vegetation management; 603 KAR 005:155

VETERANS' AFFAIRS

Veterans' Programs

Kentucky Women Veterans Program and coordinating
committee, administrative procedures; 017 KAR 006:020

Kentucky Wounded or Disabled Veterans Program,
administrative procedures; 017 KAR 006:030

VETERINARY EXAMINERS

Animal control agencies

Drug limitations; 201 KAR 016:552

Fees; 201 KAR 016:514

Restricted controlled substances certificate; 201 KAR 016:550

Euthanasia specialist certification; 201 KAR 16:560

Fees

Animal control agencies; 201 KAR 016:514

Animal euthanasia specialists; 201 KAR 016:514

Other; 201 KAR 016:516

Veterinarians; 201 KAR 016:510

Veterinary technicians; 201 KAR 016:512

Medical records standards; 201 KAR 016:701

Surgery standards; 201 KAR 016:702

Technicians, licensed; 201 KAR 016:750

WRESTLING

See *Boxing and Wrestling*

SUBJECT INDEX