



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on January 8, 2024 at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1451 [Online agenda is updated as needed](#)

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

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

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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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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
Monday, January 8, 2024 at 1 p.m.
Annex Room 149



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

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 (KPPA)

General Rules

- 105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities. (Filed with Ordinary) ("E" expires 07-07-2024) (Deferred from December)
- 105 KAR 001:148. Merged, split, new, separate, or separated employers or entities. (Filed with Emergency)
- 105 KAR 001:215. Administrative hearing.
- 105 KAR 001:270. Federal tax withholding or direct rollover of eligible distributions.

BOARDS AND COMMISSIONS

Board of Pharmacy

- 201 KAR 002:165. Transfer of prescription information.

Board of Medical Licensure

- 201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners.

Board of Nursing

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

Board of Social Work

- 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. (Not Amended After Comments) (Deferred from December)

Board of Licensed Professional Counselors

- 201 KAR 036:005. Definitions for 201 KAR Chapter 036. (Amended After Comments)
- 201 KAR 036:030. Continuing education requirements. (Deferred from December)
- 201 KAR 036:040. Code of ethics. (Not Amended After Comments)
- 201 KAR 036:045. Distance counseling. (Deferred from December)
- 201 KAR 036:050. Complaint management process. (Deferred from December)
- 201 KAR 036:060. Qualifying experience under supervision. (Deferred from December)
- 201 KAR 036:065. Licensed professional clinical counselor supervisor. (Amended After Comments)
- 201 KAR 036:070. Application, education, and examination requirements. (Deferred from December)
- 201 KAR 036:072. Reciprocity requirements for applicants licensed or certified in another state. (Deferred from December)
- 201 KAR 036:075. Renewal, late renewal, and reinstatement of license. (Amended After Comments)
- 201 KAR 036:090. Administrative hearings for denials and revocation of probated sanction. (Amended After Comments)

INDEPENDENT ADMINISTRATIVE BODIES

Board of Emergency Medical Services

- 202 KAR 007:030. Fees of the board.
- 202 KAR 007:410. Advanced practice paramedics.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

- 301 KAR 002:030. Commercial guide license.

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ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Merchant Electric Generating Facilities (MEGF)

401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

401 KAR 103:020. Decommissioning standards.

401 KAR 103:030. Financial requirements.

JUSTICE AND PUBLIC SAFETY CABINET

Internal Investigations Branch

Abuse Investigation

500 KAR 013:020. Internal Investigations Branch.

TRANSPORTATION CABINET

Department of Highways

Traffic

603 KAR 005:155. Vegetation management.

EDUCATION AND LABOR CABINET

Office of District Support Services

School Administration and Finance

702 KAR 003:330. Liability insurance.

Office of Special Instructional Services

Instructional Programs

705 KAR 004:231. General program standards for secondary career and technical education programs.

PUBLIC PROTECTION CABINET

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. (Deferred from December)

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

Office of Inspector General

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

Department for Medicaid Services

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 009:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services. (Filed with Emergency)

Department for Community Based Services

Child Support

921 KAR 001:410. Child support collection and enforcement.

Supplemental Nutrition Assistance Program (SNAP)

921 KAR 003:027. Technical requirements.

921 KAR 003:100. Transitional benefit alternative.

Department for Community Based Services

Daycare

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals. (Not Amended After Comments)

3. REGULATIONS REMOVED FROM JANUARY'S AGENDA

OFFICE OF THE GOVERNOR

Department of Veterans' Affairs

Veterans' Programs

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures. (Comments Received; SOC ext. due 01-15-2024)

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures. (Comments Received; SOC ext. due 01-15-2024)

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BOARDS AND COMMISSIONS

Board of Nursing

- 201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. (Comments Received; SOC ext. due 01-15-2024)
- 201 KAR 020:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder. (Comments Received; SOC ext. due 01-15-2024)
- 201 KAR 020:067. Professional standards for medicinal cannabis. (Comments Received; SOC ext. due 01-15-2024)
- 201 KAR 020:215. Continuing competency requirements. (Comments Received; SOC ext. due 01-15-2024)

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Special Waste

- 401 KAR 045:010. Definitions for 401 KAR Chapter 045. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:020. Types of special waste permits. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:025. Permit review and determination timetables. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:030. Obtaining a special waste site or facility permit. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:040. Modification, transfer or revocation of special waste permits. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:050. Public information procedures for special waste site or facility permits. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:080. Financial requirements and bonds for special waste facilities. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:100. Landfarming and composting of special waste. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:105. Land application of biosolids. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:140. Conditions applicable to all special waste permits. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities. (Comments Received; SOC ext. due 01-15-2024)
- 401 KAR 042:250. Special waste permit fees. (Comments Received; SOC ext. due 01-15-2024)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Child Welfare

- 922 KAR 1:520. Supplements to per diem rates. (Comments Received; SOC ext. due 01-15-2024)

*****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.

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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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(As Amended at Interim Joint Committee on Health Services,
December 13, 2023)**902 KAR 45:190E. Hemp-derived cannabinoid products;
packaging and labeling requirements.**

EFFECTIVE: December 13, 2023

Prior versions:

Amendment - 50 Ky.R. 584

Amended After Comments – 50 Ky.R. 1021

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035,
217.037, 217.039, [217.455,] 260.850, 438.305(4), 2023 Ky Acts ch.
78STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135,
217.155

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

Section 1. Definitions. (1) "Adult-use cannabinoid" means a product with intoxicating properties that changes the function of the nervous system and results in alterations of perception, cognition, or behavior. tetrahydrocannabinols, tetrahydrocannabinolic acids that are artificially or naturally derived, delta-8 tetrahydrocannabinol, delta-9 tetrahydrocannabinol, the optical isomers of delta-8 tetrahydrocannabinol or delta-9 tetrahydrocannabinol, and any artificially derived cannabinoid that is reasonably determined to have an intoxicating effect.

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

(2)(3) "Approved source" means:

(a) A Kentucky hemp grower[, processor,] or handler licensed by the Kentucky Department of Agriculture, or an out-of-state hemp grower[, processor,] or handler who is duly authorized to produce hemp under the laws of the applicable jurisdiction; or

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

(c) A manufacturer or processor permitted by another state regulatory authority for hemp-derived cannabinoid products if that state has been approved by the department as having equivalent state standards for processing, laboratory testing,

and labeling requirements.

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

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

(5)(6)(3) "Cannabinoid" means a [non-intoxicating] compound found in the hemp plant Cannabis sativa L. from a United States Department of Agriculture sanctioned domestic hemp production program and does not include cannabinoids derived from any other substance.

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

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

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

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

(8)(9)(5) "Department" means the Kentucky Department for Public Health.

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

(9)(10)(7) "Hemp" is defined by KRS 260.850(5).

(10) "Hemp-derived cannabinoid" means an ingestible, inhalable, or cosmetic product that is processed or derived from hemp.

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

(12) "Hydrogenation" means the chemical reaction between molecular hydrogen (H₂) and another compound or element.

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

(14) "Infused" means adding a cannabinoid concentrate ingredient to an ingestible cannabinoid product.

(15) "Non-intoxicating cannabinoid" means a product with non-psychoactive properties that does not change the function of the nervous system and does not result in alteration of perception, cognition, or behavior.

(16)(13)(9) "Person" is defined by KRS 217.015(32).

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

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

(19) "Serious adverse event" means a medical occurrence associated with the use of a cannabinoid product that results in one or more of the following:

(a) Death;

(b) A life-threatening event;

(c) Inpatient hospitalization, or prolongation of an existing hospitalization;

(d) A persistent or significant incapacity, or substantial disruption in the ability to conduct normal life functions; or

(e) A congenital anomaly or birth defect.

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

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

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

(1) In-state permit.

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

(b)(2) The permit shall be:

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

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

3.(c) Renewed annually.

4.(3) ~~Include~~ the fee [shall be]paid in accordance with:

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

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

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

5. Include the product registration fee required by subsection (4) of this section.

(2)(a)(4) Effective January 1, 2024, all out-of-state processors and manufacturers of hemp-derived cannabinoid products available for distribution in Kentucky shall submit an annual registration to the department.

(b) The registration for an out-of-state processor or manufacturer shall:

1. Be renewed annually by December 31 each year; and

2. Include:

a. A copy of the current, valid permit to process or manufacture hemp-derived cannabinoids issued from the state regulatory authority;

b. A copy of the state regulation pertaining to the production of hemp-derived cannabinoid products; and

c. The product registration fee required by subsection (4) of this section.

(3) Cannabinoids requiring registration:

(a) Adult-use cannabinoids shall include:

1. Delta-10-tetrahydrocannabinol (Delta-10-THC);

2. Delta-9-tetrahydrocannabinol (THC) with ~~less than~~ three-tenths of one percent (0.3%) or less Total THC;

3. Delta-8-tetrahydrocannabinol (Delta-8-THC);

4. Delta-9-tetrahydrocannabinolic acid A (THCA-A) with ~~less than three-tenths of one percent (0.3%) or less~~ Total THC;

5. Delta-9-tetrahydrocannabivarin (THCV);

6. Delta-9-tetrahydrocannabivarinic acid (THCVA);

7. Delta-6-tetrahydrocannabinol (Delta 6);

8. Hexahydrocannabinol (HHC)(-);

9. Tetrahydrocannabiphorol (THCP); and

10. Tetrahydrocannabinol (THCM);

(b) Non-intoxicating cannabinoids shall include:

1. Cannabidiol (CBD);

2. Cannabidiolic acid (CBDA);

3. Cannabidiol (CBDV);

4. Cannabidiol (CBDVA);

5. Cannabichromene (CBC);

6. Cannabichromenic acid (CBCA);

7. Cannabigerolic acid (CBGA);

8. Cannabigerol (CBG);

9. Cannabinol (CBN); and

10. Cannabitrilol (CBT); and

(c) All other cannabinoids are prohibited for sale in Kentucky unless pre-approved by the cabinet.

(4) An annual registration fee of \$200 per adult-use cannabinoid product shall be paid to the cabinet by check or money order made payable to the Kentucky State Treasurer.

(5) All in-state processors and manufacturers permitted by the cabinet, and all out-of-state processors and manufacturers registering with the cabinet shall submit:

(a) The name and address of the applicant;

(b) The name and address of the brand or company whose name shall appear on the label, if other than the applicant's;

(c) The name of the product;

(d) The name and address of the origin of the adult-use cannabinoid product with which the final product was manufactured;

(e) A complete copy of the front and back of the label that will appear on the product; and

(f) A certificate of analysis from an accredited third-party laboratory for the lot for each product.

(6) A new registration shall be required for changes:

(a) In the chemical composition or formula of the

cannabinoid product;

(b) To the serving size or directions for use; or

(c) In ownership.

Section 3. Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products.

(1) All processors and manufacturers shall meet:

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

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

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

(3) A business that processes, manufactures, warehouses, distributes, sells, or serves adult-use hemp-derived cannabinoid products shall not employ any person who is under twenty-one (21) years of age, unless the person employed is at least eighteen (18) years of age and under the supervision of a person twenty-one (21) years of age or older.

(4) Non-intoxicating cannabinoid products shall:

(a) Have at least a ~~fifteen (15)~~~~twenty-five (25)~~ non-intoxicating cannabinoid to one (1) adult-use cannabinoid ratio; and

(b) Contain two and five-tenths (2.5) milligrams or less of adult-use cannabinoid per serving.

(5) The serving size of an ingestible cannabinoid product shall be:

(a) As a whole unit where one (1) unit equals one (1) serving;

(b) Equal the maximum amount recommended, as appropriate, on the label for consumption per occasion in whole units; and

(c) Based on the amount typically consumed.

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

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

(a) Any non-cannabinoid additive that increases toxicity or addictive potential, excluding caffeine;

(b) ~~Alcohol~~Caffeine;

(c) Nicotine; or

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

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

(8)(9) Only permitted hemp-derived cannabinoid processing facilities shall perform cannabinoid extraction, conversion, catalyzation, ~~or~~–distillation, hydrogenation, or other refinement processes.

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

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

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

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

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

(12)(13) **(a)** Solvents shall be collected and stored in ~~food~~medical–grade containers when practical to maintain purity; and

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

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

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

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

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

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

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

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

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

(a) **Acetates[Vitamin E acetate (VEA)]**;

(b) Medium-chain triglycerides (MCT);

(c) Polyethylene glycol (PEG);

(d) Propylene glycol (PG or PPG);

(e) **Diketones**:

1. 2,3-butanedione (Diacetyl);

2. **2,3-pentanedione (acetylpropionyl)**; and

3. **3-hydroxybutanone (acetoin)**;

(f) Myclobutanil;

(g) **Artificial food coloring**; and

(h) **Benzoic acid**.

Section 4.[Section 3.] Product Sampling and Testing Requirements. (1) Sampling and testing for all hemp-derived cannabinoid products shall be:

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

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

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

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

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

(a) Documented and maintained in the processing and manufacturing facility for at least two (2) years and available to the department upon request;

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

(c) Included on the product label.

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

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

(b) A hemp-derived cannabinoid processing or manufacturing permittee shall prepare sampling policies and procedures that contain the information necessary for collecting and transporting samples from hemp-derived cannabinoid **[concentrates, extracts, and edible]**products in a manner that does not endanger the

integrity of the sample for any analysis required by this administrative regulation.

(6) Reserve samples.

(a) Processors and manufacturers shall collect and hold reserve samples of each batch or process lot of packaged and labeled product.

(b) The reserve samples shall:

1. **Be held using the same container-closure system that the packaged and labeled product is distributed, or if distributing to be packaged and labeled, using a container-closure system that provides the same characteristics to protect against contamination or deterioration;**

2. **Be identified with the batch or process number;**

3. **Be retained for the shelf-life date, as applicable, or for two (2) years from the date of distribution of the last batch or process lot of the product associated with the reserve sample; and**

4. **Consist of at least twice the quantity necessary for all tests or examinations to determine if the product meets specifications.**

(7) Laboratory requirements.

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

(b) The testing facility shall:

1. Maintain ISO 17025 accreditation; and

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

a. Cannabinoids;

b. Microbial impurities;

c. Mycotoxins;

d. Residual pesticides;

e. Heavy metals; and

f. Residual solvents[**and processing chemicals**], if applicable.

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

1. Is issued by an accreditation organization; and

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

(8)(7) Testing requirements.

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

(b) **Test shall be performed using a cannabinoid quantification technique with a high enough specificity and sensitivity to differentiate between cannabinoids and isomers of cannabinoids.**

(c) Hemp-derived cannabinoid **[concentrate, extract, or edible]**products shall be tested for:

1. Cannabinoids;

2. Microbial impurities;

3. Mycotoxins;

4. Residual pesticides;

5. Heavy metals; and

6. Residual solvents[**and processing chemicals**], if applicable.

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

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

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

(e)(d) An infused hemp-derived cannabinoid product shall be

tested if the addition of ingredients or processing practice create a reasonable or foreseeable microbial impurity, mycotoxin, residual pesticide, heavy metals, or **residual solvents[processing chemicals]** hazard.

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

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

(9)(8) Standards for hemp-derived cannabinoid testing.

(a) A testing facility shall establish a limit of quantitation of one (1) milligram per gram (mg/g) or lower for all adult-use hemp-derived cannabinoids analyzed and reported.

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

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

2. Tetrahydrocannabinol-A concentration;

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

4. **CBD-A concentration;**

5. Milligrams per serving for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics[total CBD], as applicable;

4.6. Milligrams per package for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics[total CBD], as applicable; and

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

(c) The following calculation shall be used for calculating total tetrahydrocannabinol[**;**

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

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

(d) For hemp-derived cannabinoid infused products, **excluding cosmetics**, potency shall be reported as milligrams of total tetrahydrocannabinol and the primary cannabinoid marketed, **excluding cosmetics[total CBD]** per gram.

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

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

(10)(9) Standards for microbial impurities.

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

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

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

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

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

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

5. **Listeria Spp. is not detected in one (1) gram; and**

6. **A total combined yeast and mold not to exceed 100,000 colony forming units per gram.**

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

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

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

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

4. **Listeria Spp. is not detected in one (1) gram; and**

5. **A total combined yeast and mold not to exceed 100,000 colony forming units per gram.**

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

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

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

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

(11)(10) Standards for mycotoxin testing.

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

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

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

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

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

(12)(11) Standards for testing residual pesticides.

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

Residual pesticide	Chemical Abstract Service (CAS) assigned number	Maximum allowable concentration stated in parts per million (ppm)
Abamectin	71751-41-2	0.5 ppm
Acephate	30560-19-1	0.4 ppm
Acequinocyl	57960-19-7	2.0 ppm
Acetamiprid	135410-20-7	0.2 ppm
Aldicarb	116-06-3	0.4 ppm
Azoxystrobin	131860-33-8	0.2 ppm
Bifenazate	149877-41-8	0.2 ppm
Bifenthrin	82657-04-3	0.2 ppm
Boscalid	188425-85-6	0.4 ppm
Carbaryl	63-25-2	0.2 ppm
Carbofuran	1563-66-2	0.2 ppm
Chlorantraniliprole	500008-45-7	0.2 ppm
Chlorfenapyr	122453-73-0	1.0 ppm
Chlormequat chloride	7003-89-6	0.2 ppm
Chlorpyrifos	2921-88-2	0.2 ppm
Clofentezine	74115-24-5	0.2 ppm
Cyfluthrin	68359-37-5	1.0 ppm
Cypermethrin	52315-07-8	1.0 ppm
Daminozide	1596-84-5	1.0 ppm
DDVP (Dichlorvos)	62-73-7	0.1 ppm
Diazinon	333-41-5	0.2 ppm
Dimethoate	60-51-5	0.2 ppm
Ethoprophos	13194-48-4	0.2 ppm
Etofenprox	80844-07-1	0.4 ppm

Etoazole	153233-91-1	0.2 ppm
Fenoxycarb	72490-01-8	0.2 ppm
Fenpyroximate	134098-61-6	0.4 ppm
Fipronil	120068-37-3	0.4 ppm
Flonicamid	158062-67-0	1.0 ppm
Fludioxonil	131341-86-1	0.4 ppm
Hexythiazox	78587-05-0	1.0 ppm
Imazalil	35554-44-0	0.2 ppm
Imidacloprid	138261-41-3	0.4 ppm
Kresoxim-methy	143390-89-0	0.4 ppm
Malathion	121-75-5	0.2 ppm
Metalaxyl	57837-19-1	0.2 ppm
Methiocarb	2032-65-7	0.2 ppm
Methomyl	16752-77-5	0.4 ppm
Methyl parathion	298-00-0	0.2 ppm
Myclobutanil	88671-89-0	0.2 ppm (prohibited at any concentration for inhalation)
Naled	300-76-5	0.5 ppm
Oxamyl	23135-22-0	1.0 ppm
Paclobutrazol	76738-62-0	0.4 ppm
Permethrins (measured as the cumulative residue of cis- and trans-isomers)	52645-531 (54774-45-7 and 51877-74-8)	0.2 ppm
Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7 (121-21-1, 25402-06-6 and 4466-14-2)	1.0 ppm
Pyridaben	96489-71-3	0.2 ppm
Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

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

(13)(12) Standards for testing for heavy metals.

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

1. Arsenic, maximum allowable concentration: **one and five-tenths (1.5)[zero and four-tenths (0.4)]** ppm;

2. Cadmium, maximum allowable concentration: zero and four-tenths (0.4) ppm;

3. Lead, maximum allowable concentration: one (1) ppm; and

4. Mercury, maximum allowable concentration: one and two-tenths (1.2) ppm.

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

1. Arsenic, maximum allowable concentration: zero and two-tenths (0.2) ppm;

2. Cadmium, maximum allowable concentration: zero and two-tenths (0.2) ppm;

3. Lead, maximum allowable concentration: zero and five-tenths (0.5) ppm; and

4. Mercury, maximum allowable concentration: zero and one-

tenths (0.1) ppm.

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

(14)(13) Standards for testing residual solvents **[—and processing chemicals]**.

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

Solvent [—or processing chemical]	CAS assigned number	Maximum allowable concentration stated in parts per million (ppm)
Acetone	67-64-1	1,000 ppm
Benzene*	71-43-2	2 ppm
Butanes, (measured as the cumulative residue of n-butane and iso-butane),	106-97-8 and 75-28-5	1,000 ppm
Ethanol	64-17-5	5,000[1,000] ppm
Ethyl Acetate	141-78-6	1,000 ppm
Heptanes	142-82-5	1,000 ppm
Hexanes* (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5 and 79-29-8	60 ppm
Methanol*	67-56-1	600 ppm
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4 and 463-82-1	1,000 ppm
2-Propanol (IPA)	67-63-0	1,000 ppm
Propane	74-98-6	1,000 ppm
Toluene*	108-88-3	180 ppm
Total Xylenes* (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethylbenzene),	1330-20-7 (95-47-6, 108-38-3 and 106-42-3 and 100-41-4)	430 ppm
Any other solvent not permitted for use pursuant to this regulation		1 ppm[None Detected]

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

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

1. Did not use any solvent listed in paragraph (a) of this subsection;

2. Used a mechanical extraction process to separate cannabinoids; or

3. Used only water, animal fat, or vegetable oil as a solvent to separate the cannabinoids.

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

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

1. Sampled and tested in accordance with this administrative regulation; and

2. Tested for solvents if not otherwise required for that product under this administrative regulation.

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

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

(a) A water activity (Aw) rate of less than 0.65; and

(b) A total combined yeast and mold not to exceed 100,000 colony forming units per gram.

(16)(15) Failed testing and remediation.

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

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

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

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

2. Upon reanalysis as described in this subsection.

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

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

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

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

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

(17)(16) A processing or manufacturing facility shall:

1. Have detailed procedures for:

1. Sterilization processes to remove microbiological contaminants; and

2. Reducing the concentration of solvents; and

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

(18) Hazard analysis and risk-based preventive controls.

(a) Processing facilities shall conduct a hazard analysis in accordance with 902 KAR 45:160 Section 2(1)(u) to identify and evaluate, based on experience, illness data, scientific report, and other information known, or reasonably foreseeable hazards associated with each type of cannabinoid product produced by extraction, conversion, catalyzation, or distillation, hydrogenation, or other refinement processes, and shall include:

1. Processing reagents or catalysis;

2. Processing by-products or compounds; and

3. Tentatively identified compounds.

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

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

(d)(17) Tentative identification of compounds (TICs).

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

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

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

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

~~(e) The cabinet may initiate an investigation of a processing [or manufacturing] facility as a result of a by-product or compound with no toxicity study or a TICs report from a testing facility and may require a processing or manufacturing facility to submit samples for additional testing, including testing for analytes that are not required by this administrative regulation, at the processing or manufacturing facility's expense.~~

(19)(18) Certificate of analysis.

(a) The testing facility shall:

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

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

(b) The COA shall contain, at minimum:

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

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

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

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

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

6. [An attestation from the testing facility supervisory or management employee that all LOQ samples required by this administrative regulation were performed and met the acceptance criteria; and

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

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

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

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

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

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

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

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

(d) The testing facility shall retain the reserve sample, consisting of any portion of a sample that was not used in the testing process.

The reserve sample shall be kept at minimum, for forty-five (45) business days after the analyses, after which time it may be destroyed and denatured to the point the material is rendered unrecognizable and unusable.

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

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

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

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

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

3. Products intended for out-of-state sale shall be stored separately from in-state products and shall have signage indicating the products are for out-of-state sale.

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

Section 5. [Section 4.] Record Keeping. (1) A master formulation record shall be prepared and maintained for each unique hemp-derived cannabinoid product.

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

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

(b) Ingredient identities and amounts;

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

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

(e) Process controls and procedures; and

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

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

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

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

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

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

(d) Production batch number;

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

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

(g) Weight or measurement of each ingredient;

(h) Documentation of process controls;

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

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

Section 6. [Section 5.] [Section 3.] Product Packaging and Labeling. (1) Each hemp-derived cannabinoid product manufactured, marketed, sold, or distributed in the commonwealth shall be packaged and labeled in accordance with KRS 217.037, 2023 Ky. Acts ch. 78, and this administrative regulation.

(2) Each container of **adult-use [ingestible or cosmetic hemp-derived]** cannabinoid product shall:

(a) Have a tamper-evident seal; and

(b) Be in child-resistant packaging.

(3) Each container of non-intoxicating cannabinoid product or cosmetic shall have a tamper-evident seal.

(4) [Ingestible hemp-derived.] Cannabinoid product packaging shall not include:

(a) Any cartoon images;

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

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

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

(e) The logo of the department or cabinet, or any seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe the product has been endorsed, manufactured, or used by any state, county, or municipality or any agency thereof, **excluding the use of seals associated with state or federal programs used in accordance with state or federal law and regulations.**

(5) [(4)] The total amount of hemp-derived cannabinoid per serving and the total amount per container **shall accurately reflect testing results and shall not contain less than eighty (80) percent or more than 120% of the concentration of total cannabinoid content as listed on the product label [as reported by the testing facility].**

(a) For hemp-derived cannabinoid **ingestible and inhalable [infused edible]** products, potency shall be labeled as milligrams per serving for total tetrahydrocannabinol and **the primary cannabinoid marketed [total CBD], as applicable; and milligrams per package for total tetrahydrocannabinol and the primary cannabinoids marketed; and [total CBD, as applicable.]**

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

(c) The results of all]Other hemp-derived cannabinoids **labeled [as a percentage, in either] milligrams per gram (mg/g) per serving, excluding cosmetics, and milligrams per package, if listed on the label.**

(6) [All cannabinoid products shall include the common cannabinoid description in the product name, such as "Delta-8 THC gummies" or "Full-spectrum CBD extract" using the same or larger font than the product name.] [if by weight, or milligrams per milliliter (mg/mL) if by volume, as applicable.

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

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

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

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

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

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

(e) " **May cause drowsiness or impairment.** Do not drive a motor vehicle or operate machinery while using this product."

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

(7) [(8)] A quick response or QR code may be used as a link to the warning statements required by subsection (7) of this section. The QR code shall be labeled as "Warning Statements" directly above or below the code and shall be large enough to be smart-phone readable.

Section 7. [Section 6.] Retail Sale of Hemp-derived Cannabinoid Products. (1) All hemp-derived cannabinoid products sold in a retail establishment shall:

(a) Be from an approved source;

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

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

(2) Retail establishments **and food service establishments** offering **adult-use** hemp-derived cannabinoid products shall register with the cabinet at <https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM>

within ninety (90) days of the effective date of this emergency administrative regulation.

(3) Only cannabinoid products registered in accordance with Section 2 of this administrative regulation may be offered at retail establishments and food service establishments.

(4) Cannabinoid retailers shall maintain records of cannabinoid product purchase, including the name and address of the cannabinoid processor or manufacturer, and the wholesaler or distributor.

(5) Only non-intoxicating and cosmetic cannabinoid[cannabinoid] products may be sold to persons under the age of twenty-one (21).

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

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

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

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

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

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

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

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

Section 8.[Section 7.] Ingestible Hemp-derived Cannabinoid Products at Food Service Establishments. (1) Only registered, pre-packaged adult-use ingestible cannabinoid products may be offered as ready-to-consume or for direct consumption at food service establishments.

(2) Adult-use cannabinoids shall not be added to an ingestible food product at a food service establishment.

(3) Non-intoxicating cannabinoids[Except as established in subsection (3) of this section, an ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:

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

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

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

(d) The name of the manufacturer or distributor;

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

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

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

(h) An expiration date, if any.

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

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

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

cure, or prevent any disease.

Section 4. Hemp-derived Ingestible Cannabinoid Products.:

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

[(4)][(2)] The non-intoxicating[hemp-derived] cannabinoid shall be obtained from an approved source.

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

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

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

(a) The common name of the product; and

(b) The manufacturer or distributor of the product.

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

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

Section 9.[Section 8.] Inspection and Enforcement. (1) The cabinet or its duly authorized agent shall conduct an onsite inspection of all hemp-derived cannabinoid processing and manufacturing establishments, storage warehouses, and distribution centers[, and retail establishments].

(2) (a) Retail establishments offering adult-use cannabinoid products shall be inspected by the cabinet or its duly authorized agent; and

(b) Retail establishments offering only non-intoxicating cannabinoid products may be inspected by the cabinet or its duly authorized agent upon complaint, receipt of a report of a serious adverse event, or at the discretion of the cabinet.

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

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

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

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

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

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

2. Phone to (502)564-7181.

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

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

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

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

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

[(10)][(9)] In all other instances of violation of this administrative

regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

~~(11)(40)~~ If a permit holder has failed to comply with the written notice within the timeframe granted, the cabinet shall issue a notice of intent to suspend the permit.

~~(12)(41)~~ The notice in subsection (10) of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period.

~~(13)(42)~~ Any person whose permit has been suspended may request a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

~~(14)(43)~~ For a permitted facility that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

WESLEY W. DUKE, General Counsel

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 13, 2023

FILED WITH LRC: October 13, 2023 at 11:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

of products to a person under the age of twenty-one (21).

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

(a) How the amendment will change this existing administrative regulation: The amendment to this emergency administrative regulation clearly defines hemp-derived cannabinoid products that are for adult-use only and separates these from nonintoxicating hemp-derived cannabinoid products, adds requirements for processing facilities, revises the requirements for manufacturing facilities, adds product testing requirements to incorporate the federal Food and Drug Administration standards for product safety, adds the requirement for a retail store to register with the department, and adds enforcement actions should a processing or manufacturing facility violate the provisions of this administrative regulation. The amended after comments version revises the defined terms to distinguish adult-use products from non-intoxicating products, adds a registration for out-of-state processors and manufacturers, revises the retail establishment and food service establishment requirements, revises the testing requirements, and revises the labeling requirements.

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current manufacturers permitted by the department will need to ensure their products meet the manufacturing and testing requirements established by this emergency administrative regulation. Retail stores will need to register with the department, allow for inspection by the cabinet or its duly authorized agent, and ensure all products sold meet the requirements of this emergency administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This emergency administrative regulation will not impact the cost of the currently registered processing and manufacturing facilities.

(c) As a result of compliance, what benefits will accrue to the

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

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is applied. Testing for solvents is only required if the products listed in this emergency administrative regulation are used in the manufacturing or processing procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this emergency administrative regulation will impact the Food Safety Branch in the Department for Public Health.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Current estimates indicate this emergency administrative regulation will generate between \$5,875 and \$47,000 in the first year. This figure was determined using the current fee structure in 902 KAR 45:180 multiplied by the number of currently permitted facilities. The minimum fee is \$125, and the maximum is \$1,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This emergency administrative regulation will generate between \$5,875 and \$47,000 in subsequent years. This figure is subject to change based on changes in the number of permitted facilities.

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

(d) How much will it cost to administer this program for subsequent years? Ongoing cost to the department to implement this emergency administrative regulation will be approximately

\$500,800 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The amendment to this emergency administrative regulation will not generate cost savings for the regulated entities.

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, December 11, 2023)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3),
164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the Kentucky Higher Education Assistance Authority to provide scholarships, and KRS 164.753(3) requires the ~~[Kentucky Higher Education Assistance]~~ authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the ~~[Kentucky Higher Education Assistance]~~ authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the ~~[Kentucky Higher Education Assistance]~~ authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures, and repayment obligations related to scholarships provided under the program.

Section 1. Definitions.

- (1) "Authority" is defined by/in KRS 164.740(1).
- (2) "Critical shortage area" is defined by/in KRS 164.769(2)(a).
- (3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
- (4) "Eligible program of study" is defined by/in KRS 164.769(2)(c)]164.769(2)(b)].
- (5) "Expected family contribution" is defined by/in KRS 164.769(2)(d)]164.769(2)(e)].
- (6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:
 - (a) Required by KRS 161.030 and established in 16 KAR 7:010; and
 - (b) Also referenced as the beginning teacher internship.
- (7) "Participating institution" is defined by/in KRS 164.769(2)(e)]164.769(2)(d)].
- (8) "Professional Teaching Certificate" means the document issued to:
 - (a) An individual upon successful completion of the beginning teacher internship; or
 - (b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.
- (9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.
- (10) "Qualified teaching service" is defined by/in KRS 164.769(2)(f)]164.769(2)(e)].
- (11) "Semester" is defined by/in KRS 164.769(2)(g)]164.769(2)(f)].
- (12) "Summer term" is defined by/in KRS 164.769(2)(h)]164.769(2)(g)].
- (13) "Teaching" means performing continuous classroom instruction that:
 - (a) Is:
 1. Pursuant to a professional teaching certificate in a position for which regular teacher certification is a prerequisite; or
 2. During participation in the Kentucky Teacher Internship Program (KTIP); and
 - (b) Shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process.

(1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, initial applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order of priority until funds are depleted:

(a) Initial applicants who:

1. Meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028; and

2. Have been unconditionally admitted to a teacher education program ~~[shall be ranked in ascending order by expected family contribution]~~.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program ~~[shall be ranked in ascending order by expected family contribution]~~.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program ~~[shall be ranked in ascending order by expected family contribution]~~.

(4) Each group of initial applicants in subsection (3) of this section shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be \$2,000[4,250] for a summer session, \$3,000[2,500] for a semester, and \$6,000[5,000] for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be \$2,000[325] for a summer session, \$2,500[625] for a semester, and \$5,000[4,250] for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate, or master's degree will be completed shall be \$500 per credit hour during a semester or summer session[:

(a) \$240 per credit hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.]

Section 4. Disbursements.

(1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall:

- (a) Agree to repay the scholarship funds; or
- (b) Render qualified teaching service ~~in lieu thereof~~.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account, ~~and~~ notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)

(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation.

(1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)

(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, ~~and~~ requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or

scholarship received pursuant to KRS 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:

- (a) Has completed the program of study;
- (b) Is providing qualified teaching service; and
- (c) Is prohibited from participating in KTIP solely as a result of state budget limitations.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment.

(1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest ~~thereon~~, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default.

(1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the

scholarship recipient's last known address and shall be effective upon mailing. The authority may agree to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment, and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

Section 12. Refunds.

(1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Go Higher Grant;

(d) Teacher Scholarship;

(e) Kentucky Educational Excellence Scholarship;

(f) Kentucky Coal County College Completion Scholarship;

(g) National Guard tuition assistance; and

(h) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full

teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.

(8)

(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information about this program to potential recipients through high school principals, counselors, and school superintendents ~~about this program to potential recipients~~. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference.

(1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at kheaa.com.

CONTACT PERSON: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

BOARDS AND COMMISSIONS

Board of Optometric Examiners

(As Amended at ARRS, December 11, 2023)

201 KAR 5:005. Fees and fines ~~and forms~~.

RELATES TO: KRS 218A.205(3)(~~h~~)(~~g~~), (8), 320.220, 320.250, 320.270, 320.310

STATUTORY AUTHORITY: KRS 218A.205(3)(~~h~~)(~~g~~), (8), 320.240(~~4~~), (7), 320.270(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4) requires the board to promulgate administrative regulations for the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky Board of Optometric Examiners. KRS 320.250 establishes criteria for an applicant to apply for a license. KRS 320.270 authorizes~~grants~~ the board ~~the discretion~~ to admit to practice in Kentucky persons licensed to practice optometry in other states. KRS 218A.205(3)(~~h~~) and (8) require~~(g) requires~~ fingerprint-supported criminal record checks and queries to the National Practitioner Data Bank on applicants. This administrative regulation establishes fees, including fees relating to licensure~~prescribes the procedures to be followed in making application to the board for a license, renewal of that license,~~ and fines those who fail to comply with continuing education requirements.

Section 1. Initial Application Fee. A non-refundable initial application and license fee shall be \$500 per year, as established in 201 KAR 5:010.

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Section 2. Application for License by Endorsement Fee. A non-refundable application and license by endorsement fee shall be \$700 per year, as established in 201 KAR 5:010.

Section 3. Initial License Fee. A non-refundable initial license fee shall be pro-rated from \$250 for the remainder of months left in the license year.

Section 4. Renewal License Fee. A non-refundable renewal license fee shall be \$250 per year, as established in 201 KAR 5:090.

Section 5. Late Renewal License Fee. A non-refundable late renewal license fee shall be \$100, in addition to the renewal license Fee outlined in Section 4 of this administrative regulation.

Section 6. Duplicate License Fee. A non-refundable fee for a duplicate license renewal certificate shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$250 for each year, or any portion of a year that the license was not renewed.

Section 8. Reinstatement Administrative Processing Fee. A reinstatement administrative processing fee shall be \$300, in addition to the reinstatement fee outlined in Section 7 of this administrative regulation.

Section 9. Name Change Fee. A non-refundable fee to process a name change shall be twenty five (25) dollars.

Section 10. Insufficient Funds Fee. An insufficient funds[A] fee for a returned check or denied online banking (ACH) payment shall be fifty (50) dollars.

Section 11. Continuing Education Non-compliance Fine. A fine of \$500 shall be assessed against any licensee who fails to comply with the Continuing Education requirements for Kentucky Optometrists as outlined in KRS 320.280 and 201 KAR 5:030. The initial assessment of this fine against a licensee shall not result in disciplinary action and shall not be reported to the National Practitioners Databank (NPDB). However, any subsequent violations of this provision may be reported to the NPDB at the discretion of the board. In these[such] instances, the action will be appealable pursuant to KRS 320.331[320.321, 201 KAR 5:070,] and KRS Chapter 13B.

Section 12. License Verification List. A fee for a licensee verification list shall be \$100.

Section 13. Individual License Verification. A fee for an individual licensee written verification shall be twenty-five (25) dollars.

[Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference from www.optometry.ky.gov:

(a) "Application for License to Practice Optometry", March 2023; and

(b) "Application for License by Endorsement to Practice Optometry", March 2023.

(c) "Application for Expanded Therapeutic Procedures Course", March 2023;

(d) "Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(e) "Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(f) "Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures", March 2023;

(g) "Preceptor Approval Form", March 2023;

(h) "Preceptor Evaluation of Expanded Therapeutic Laser Procedure", March 2023; and

(i) "Application to Utilize Expanded Therapeutic Laser Procedure(s)", March 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, telephone (859) 246-2744, Monday through Friday, 9 a.m. to 4:30 p.m. or on our Web site www.optometry.ky.gov]

CONTACT PERSON: Christi LeMay, Executive Director, Kentucky Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504; phone (859) 246-2744; fax (859) 246-2746; email christi.lemay@ky.gov.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (As Amended at ARRS, December 11, 2023)

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) requires[mandates that] veterinarians to 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) requires[authorizes] the board to set fees for such special permits. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement[these] fees for veterinarians, as well as fees for special permits. This administrative regulation also establishes reduced and waived fees for military servicemembers.

Section 1. Payment and Submission of Fees.

(1) Fees to the board shall be paid by check or money order, or, if available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. [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 shall be [is] the time period beginning the day after the renewal deadline to the next renewal deadline.~~

~~(2)[(a)] Except as established in[provided by] subsections (5) and [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; and [;]~~

~~(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.] No later than September 30 of the second year of the renewal biennium, 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] [\$400] 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] [\$400] in addition to the renewal fee established [as described] in subsections [Section 5(2), [and] (5), and (6)] [Section 4(1) or Section 6] of this section [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 a [no] renewal application package and all attachments, and late fee if applicable, is not submitted [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 established in subsection 2 of this

section [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. through 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 be [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 established [as described in paragraph Section 7(2)(a) of this subsection] [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 established [provided for] in subparagraphs 1. and 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; and [;]

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 ~~established~~**[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, for if~~ a veterinarian applicant who is an active duty servicemember, or ~~whose~~**[their]** spouse is an active duty servicemember, ~~then~~ ~~all~~ application fees to the board shall be waived ~~if~~**[when all of the following conditions are met]**:

(a) The servicemember, ~~or~~**[and]** the service member's spouse, ~~has~~ ~~[if one exists, shall have]~~ their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinarian ~~holds~~**[shall hold]** at least one (1) license equivalent in scope in another United States jurisdiction;

(c) Within ninety (90) days of relocating, the veterinarian ~~registers~~**[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).~~f.]~~

(d) The servicemember ~~submits~~**[shall submit]** a copy of their current military orders to the board;

(e) All veterinarian ~~licenses~~**[licensees]** held in any jurisdiction by the veterinarian ~~shall~~**remain** in good standing;~~[and]~~

(f) ~~In order to demonstrate compliance with the requirement of paragraph [subparagraph (2)](e) of this subsection[section], the servicemember or their spouse submits~~**[shall submit]** ~~an AAVSB VAULT report to the board; and~~

(g) The veterinarian licensee ~~submits~~**[shall submit]** to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

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**BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)**

201 KAR 16:512. Fees for veterinary technicians.

RELATES TO: KRS ~~321.190, 321.235~~**[324.240]**, 321.441, ~~321.442~~

STATUTORY AUTHORITY: KRS ~~321.235(1)(c)~~**[324.235(3)]**, ~~321.320~~**[324.240(5)]**, ~~321.441(7)~~**[324.441(3)]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~321.235(1)(c)~~**[324.240(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) requires/mandates that~~ veterinary technicians ~~to~~ 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 shall be~~**[is]** the time period beginning the day after the renewal deadline to the next renewal deadline.

(2)~~[(a)]~~ Except as ~~established in~~ ~~[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 forty (40) dollars;]~~**[\$40.]**

(b) Between June 30, 2026, and June 30, 2028, ~~[the renewal fee shall be forty-five (45) dollars; and]~~**[\$45.]**

(c) After June 30, 2028, ~~[the renewal fee shall be fifty (50) dollars]~~**[\$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-)]~~ ~~No later than September 30 of the renewal period,~~ 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 ~~established~~**[as described]** in ~~subsections (2) and (5)]~~**[Section 4(1)]** 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 ~~a~~**[no]** renewal application package and all attachments, and late fee if applicable, is ~~not submitted~~**[paid]** to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians.

(1)(a) Except as ~~established in subsection (2) of this section and 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. through 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 be 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 established [as described in paragraph [subsection (2)] (a) of this subsection/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 established [provided for] in subparagraphs 1. and 2. [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; f; i

b. Between June 30, 2026, and June 30, 2028, the licensure

reinstatement fee shall be \$100; and; i

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 ~~established~~**[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, ~~for~~**[if]** a veterinary technician applicant who is an active duty servicemember, ~~or whose~~**[their]** spouse is an active duty servicemember, ~~[then]~~ all application fees to the board shall be waived ~~if when all of the following conditions are met:~~

(a) The servicemember, or and] the service member's spouse, has [if one exists, shall have] their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinary technician holds [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 registers [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); f; i

(d) The servicemember submits [shall submit] a copy of their current military orders to the board;

(e) All veterinary technician licenses [licensees] held in any jurisdiction by the veterinary technician [shall] remain in good standing; f and]

(f) In order to demonstrate compliance with the requirement of paragraph (e) of this subsection, the servicemember or their spouse submits [shall submit] an AAVSB VAULT report to the board; and

(g) The veterinary technician licensee submits [shall submit] to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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) **requires**~~[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)]~~ **requires**~~[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)]~~ **requires**~~[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 shall be/is the time period beginning the day after the renewal deadline to the next renewal deadline.**

(2)(a) Except as ~~established in~~~~[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) through (c) of this subsection~~~~[of \$300]~~~~[fifty (50) dollars]~~ for the renewal of the certificate.

(a) Until June 29, 2026, the renewal fee shall be ninety (90) dollars~~[\$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 ~~established~~~~[as described]~~ in ~~subsection~~~~[Section 3(2)]~~~~[Section 3(1)]~~ of this ~~section~~~~[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 ~~a~~~~[no]~~ renewal package, and late fee if applicable, is ~~not submitted~~~~[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 4(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 shall be/is the time period beginning the day after the renewal deadline to the next renewal deadline.

(a) Except as ~~established in~~~~[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 ~~established~~~~[as described]~~ in ~~subsection~~ ~~[Section 4]~~~~(1)~~ of this ~~section~~~~[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 ~~a~~~~[no]~~ renewal package, and late fee if applicable, is ~~not submitted~~~~[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 to be moved to inactive status, or be moved to inactive licensure status by the board 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.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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)] requires[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 established[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 off[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 an 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 charges[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.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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

RELATES TO: KRS 217.177(1), (4), Chapter 258, Chapter 321[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) requires[permits] the Kentucky Board of Veterinary Examiners to authorize an animal control agency, which the board determines to be qualified, to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207(2) requires an[the] applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of drugs, including 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)[,] and (b) require[, and (2)(b)3] KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)3. authorizes the board to promulgate administrative regulations to establish standards in veterinary medicine, medical records, and other matters pertaining to veterinarians, veterinary technicians, animal control agencies, animal euthanasia specialists, designated on-site managers, allied animal health professionals, veterinary facilities, AAHP facilities, veterinarian managers, AAHP managers, registered responsible parties, or unlicensed persons. 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)]; or

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) An[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, an[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, an[the] applicant shall apply to the 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 shall[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 shall[may] include a copy of the designated on-site manager's fingerprints captured at a board approved location.[;].]

[(a)][(b)] The board may 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.[;].]

[(b)][(c)] The board may 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].]

[(c)][(d)] The board may 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[4/2/2022];

(b) "Reinstatement Application for Animal Control Agencies", 7/2023[4/2/2022]; and

(c) "Request for a New Designated On-site Manager", 7/2023[4/2/2022].

(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.

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BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(As Amended at ARRS, December 11, 2023)

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, [(4), (2), 321.235(3), 321.240(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) requires[permits] the Kentucky Board of Veterinary Examiners to authorize an animal control agency, that it determines to be qualified, 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 an[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) and,] (b) require[, (2)(b)3, authorizes]~~KRS 321.235(3) and 321.240(5) authorize]~~ the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)3, authorizes the board to establish standards in veterinary medicine, medical records, and other matters pertaining to veterinarians, veterinary technicians, animal control agencies, animal euthanasia specialists, designated on-site managers, allied animal health professionals, veterinary facilities, AAHP facilities, veterinarian managers, AAHP managers, registered responsible parties, or unlicensed persons. 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 3[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; ~~and~~;

(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 ~~4~~**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 321.184(40)]~~.

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; ~~and~~

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 321.184(40)]~~; ~~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) ~~For the purpose of animal euthanasia,~~ 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~~; ~~and~~ ~~The drugs approved by the board for euthanasia are:~~

~~(a) Sodium pentobarbital; and~~

~~(b) Sodium pentobarbital with lidocaine.~~

(2) ~~For the purpose of animal anesthesia or sedation prior to euthanasia,~~ 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) ~~The~~ 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 ~~8~~**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; ~~and~~ or

(b) Other locked~~other~~ enclosure; ~~and~~~~at the DEA address of record for the certified animal control agency.~~

(c) If the safe or cabinet weighs less than 750 lbs, it~~the~~~~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; ~~and~~

(a) Separate~~separate~~ from the storage location of the drugs; ~~and~~

(b) Within~~within~~ a locked storage room; ~~and~~ or other locked ~~(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 4~~3~~ of this administrative regulation, ~~transfer, and destruction of drugs~~ for a minimum of two (2) years.

(2) Records of administration shall, at a minimum, 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.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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

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

STATUTORY AUTHORITY: KRS 321.207~~(4)-(7),~~

~~321.235(1)(a), (b), (2)(b)3[(3), 321.235(3), 321.240(5)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207~~(4) [(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) and (b) require, and (2)(b)3, [KRS 321.235(3) and 321.240(5)]~~[authorize]~~ the board to promulgate administrative regulations to implement KRS Chapter 321. **KRS 321.235(2)(b)3. authorizes the board to promulgate administrative regulations to establish standards in veterinary medicine, medical records, and other matters pertaining to veterinarians, veterinary technicians, animal control agencies, animal euthanasia specialists, designated on-site managers, allied animal health professionals, veterinary facilities, AAHP facilities, veterinarian managers, AAHP managers, registered responsible parties, or unlicensed persons.** 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) Subject to the provisions of KRS Chapter 335B, 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 course 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) of this administrative regulation.

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 shall ~~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 shall ~~may~~ include a copy of the applicant's fingerprints captured at a board approved location. ~~(1)~~

~~(1)(2)~~ The board may ~~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. ~~(1)~~

~~(2)(3)~~ The board may ~~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. ~~(1)~~ and ~~(1)~~

~~(3)(4)~~ The board may ~~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.

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BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(As Amended at ARRS, December 11, 2023)

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 ~~(1)~~, 321.187, 321.235(2)(b)3.c.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 establishes that ~~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 (2)(b)3.c. authorizes ~~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 and it is the point at which decisions about diagnosis and treatment are made, and during which care/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; ~~and~~

(4) Be completed no more than forty-eight (48) hours following the clinical encounter.

Section 3. ~~[Section 2.]~~ Maintenance of Records.

(1) Medical records shall be maintained in accordance with KRS 321.187.

(2) Cessation from practice, either temporarily or permanently, shall not relieve the practitioner from compliance with this section.

(3) 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) There shall not be a charge for a board investigation.

~~[(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, at a minimum, 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; ~~and~~

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; ~~and~~

(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) of this section; 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) of this section;

(11) The name of the veterinary facility or premises where the clinical encounter took place; and

(12) If [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; ~~and~~

(b) Reason for the correction; ~~and~~

(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) of this administrative regulation.

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.]~~ **Confidentiality of Records. Medical records shall be kept confidential in accordance with KRS 321.187(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.]~~

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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 ~~establishes[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 in the Commonwealth in the interest of the health, safety, and welfare of the animal population and the citizens of Kentucky. KRS 321.235 requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of this chapter. KRS 321.190 and 321.193 ~~establish[detail]~~ that a license is required for veterinarians to practice veterinary medicine in the Commonwealth. KRS 321.441 and 321.443 ~~establish[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" is defined by[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" is defined by[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 shall[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 ~~surgical[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 who[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) ~~A veterinarian and operating area personnel shall establish, maintain, and comply with[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 shall[is] not be[considered] an appropriate method to adequately sterilize surgical instruments for small animals, except for cold sterilization for endoscopic, laparoscopic, 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 21(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 [these]clients who/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.]

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, December 11, 2023)

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 establish[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 establishes[details] that a license is required for veterinary technicians to practice veterinary technology in the Commonwealth. KRS 321.190(1) establishes [provides] that veterinary assistants may work in the Commonwealth without a veterinarian or veterinary technician license. KRS 321.441 and 321.443 establish[detail] that licensed veterinary technicians and veterinary assistants shall[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) Supervisors and supervisees are separately responsible for their own actions pursuant to KRS 321.190(7).[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 section[administrative regulation], [pursuant to KRS 321.190(6)] the acts of surgery, diagnosis, prognosis, and prescription are limited to a veterinarian 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 shall be at[is ultimately up to] the discretion and professional judgement of the supervising veterinarian if[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)[(e)] The tasks assigned to the LVT are not otherwise prohibited by KRS Chapter 321 or[,] 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, through[via] verbal communication or in accordance with the 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; or
(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, *if 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 established in subsections [subparagraphs] (3) through (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) A veterinary assistant shall not *(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; or

(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, the 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 or materials;

(e) Floating equine teeth;

(f) Ocular tonometry, Schirmer tear test, and fluorescein stain application; *or 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; *or 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, *through/via* verbal communication and in accordance with 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; *or 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.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, December 11, 2023)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.073(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the Board of Nursing to promulgate administrative regulations establishing requirements for continuing competency and approval of providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definition. "Continuing education activity" means an offering given by a provider of continuing education who has been approved or accepted by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

Section 2. (1) A provider of continuing education applicant who wants approval by the board to offer a continuing education activity shall submit an:

- (a) Application for Continuing Education Provider Approval; and
- (b) Application fee as established in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

- (a) Application for Continuing Education Provider Renewal; and
 - (b) Fee as established in 201 KAR 20:240.
- (4) Renewal shall be for two (2) years.

(5)(a) A continuing education activity that is given by a continuing education provider that has received approval by one (1) of the following organizations shall be accepted by the board:

- 1. American Association of Nurse Practitioners;
- 2. American Association of Critical Care Nurses;
- 3. American Association of Nurse Anesthetists;
- 4. American College of Nurse Midwives;
- 5. American Nurses Credentialing Center;
- 6. Association of Women's Health, Obstetric and Neonatal Nurses;

7. Nurse Practitioners in Women's Health;

8. National Association of Pediatric Nurse Practitioners;

9. National Association for Practical Nurses Education and Service;

- 10. National Association of Licensed Practical Nurses;
- 11. National League for Nursing; or
- 12. State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement in 201 KAR 20:215.

(6)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4. Providers shall comply with the standards in this section.

(1)(a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

- 1. Planning;
- 2. Development;
- 3. Implementation; and
- 4. Evaluation.

(b) A nurse administrator shall:

- 1. Hold a current license or privilege to practice;
- 2. Have experience in adult education; and
- 3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider may designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:

- (a) Enhances the quality, safety, and effectiveness of care provided by nurses; and
- (b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

- (a) Present current theoretical knowledge to enhance and expand nursing skills; and
 - (b) Promote competence in decision making.
- (4) Outcomes for continuing education activities shall be:

- (a) Related to nursing practice and interventions;
- (b) Stated in clearly defined expected learner outcomes; and
- (c) Consistent with evidence of a need for the continuing education activity.

(5) The continuing education activity shall reflect planning among the nurse administrator, faculty, and content experts.

(6)(a) The content for each educational activity shall be documented in provider files and shall include the following:

- 1. The presentation schedule;
- 2. The name and credentials of the presenter and the topic to be covered;
- 3. Times for meals and breaks, if applicable;
- 4. Teaching methods, with corresponding time frames, for each content area; and
- 5. Learner outcomes.

(b) 1. The content shall be relevant to and consistent with the learner outcomes.

2. The learner outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning outcomes and objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified.

(8) Faculty for continuing education activities shall have:

- (a) Documented expertise in the subject matter; and
- (b) Experience in presenting to adult learners.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching and learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

- (a) Learner outcomes;
- (b) Content overview;
- (c) Date, time, and presentation schedule;
- (d) Presenter;
- (e) Number of contact hours;
- (f) Fee and refund policy;
- (g) Target audience and any prerequisites; and
- (h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13)(a) A provider shall notify the board in writing within thirty (30) days of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to the pharmacology

requirement of 201 KAR 20:215.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

- (a) Title, date, and format of the activity;
- (b) Name of the person responsible for coordinating and implementing the activity;
- (c) Purpose, documentation of planning, learner outcomes, faculty, teaching, and evaluation methods;
- (d) Method of verification of participant attendance;
- (e) Participant roster including the participant's name, license number, and signature or similar electronic verification;
- (f) Summary of participant evaluations;
- (g) Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible;

(h) Master copy of certificate of completion awarded; and

(i) Identification of required instructional materials and references.

(16) Participants shall receive a certificate of completion that documents participation with the following information:

- (a) Name of participant;
- (b) Offering title, date, and the format of presentation;
- (c) The provider's name, address, telephone number, approval number, and expiration date of the providership;
- (d) Name and signature of authorized provider representative; and
- (e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to expected outcomes, effectiveness of teaching methods, and appropriateness of the format of presentation; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity with an action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

- (a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;
- (b) On the job training;
- (c) Orientation;
- (d) Basic cardiopulmonary resuscitation; and
- (e) Equipment demonstration.

Section 5. (1) The following material is incorporated by reference:

(a) "Application for Continuing Education Provider Approval", 10/2023[10/2021, Kentucky Board of Nursing]; and

(b) "Application for Continuing Education Provider Renewal", 10/2023[8/2021, Kentucky Board of Nursing].

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BOARDS AND COMMISSIONS

Board of Social Work

(As Amended at ARRS, December 11, 2023)

201 KAR 23:055. Inactive status of license.

RELATES TO: KRS 335.070(3)

STATUTORY AUTHORITY: KRS 335.070(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(3) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990. This administrative regulation establishes the requirements relating to inactive licenses, extension of inactive status, return to active status, and reinstatement.

Section 1. Request for Inactive Status.

(1) A licensee may request that their[his-or-her] license be placed on inactive licensure status by submitting to the board:

(a) A written request for their[his-or-her] license to be placed on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(b) Payment of an inactive license status fee of fifty (50) dollars made payable to the Kentucky State Treasurer; and

(c) A copy of certificates of attendance or completion to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

(2) The licensee shall be relieved of their[his-or-her] obligation to pay the license renewal fee established in 201 KAR 23:020 for their[his-or-her] license level.

Section 2. Additional Extension of Inactive Status. A licensee whose license is on inactive status may request an additional extension of the inactive license status and shall submit to the board:

(1) A written request to continue the license on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of an inactive status fee of fifty (50) dollars made payable to the Kentucky State Treasurer; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 3. License Expiration. If a[the] licensee does not submit a request for an extension of the inactive status or a[the] licensee fails to renew their[his-or-her] license before the license expiration date, the license shall expire.

Section 4. Return to Active License Status. At any time within the three (3) year period of being granted inactive licensure status, a licensee may request their[his-or-her] license be returned to active status by submitting to the board:

(1) A written request to [the board to] return their[his-or-her] license to active status;

(2) Payment of the current license renewal fee as set forth in 201 KAR 23:020; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 5. Renewal of Expired License. Following the expiration of a license under Section 3 of this administrative regulation, a licensee who desires to practice social work in Kentucky shall follow the requirements for reinstatement established in 201 KAR 23:051[050].

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BOARDS AND COMMISSIONS
Board of Social Work
(As Amended at ARRS, December 11, 2023)

201 KAR 23:160. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) requires the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

Section 1. Temporary Permits without the Examination.

(1) If requested, a temporary permit to engage in the practice of social work shall be granted~~;~~ if requested, to an applicant who has applied for licensure under the provisions of KRS 335.080 or 335.090 and completed all of the requirements for licensure except having passed the required examination.

(2) The application required by subsection (1) of this section shall be made to the board or to the online application management system and shall:

(a) Include a certification by the applicant that ~~the~~:

1. The information in the application is true, correct, and complete to the best of their knowledge and belief; and

2. The applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by payment of the application fee that shall:

1. Be made payable to the Kentucky State Treasurer if the application is processed through the board; or

2. Be made to the online application management system as directed by the board.

(3) A person practicing social work under a temporary permit as a licensed social worker or a certified social worker shall be under the supervision of a certified social worker or licensed clinical social worker licensed in Kentucky, who becomes the supervisor of record.

(4) A supervisor of record for a temporary permit holder not practicing clinical social work shall must have been licensed in Kentucky for two (2) years.

(5) Any changes to the terms of the temporary permit shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

(6)(a) Unless renewed, a temporary permit shall not extend for more than 180 days after the temporary permit is approved by the board ~~unless renewed~~.

(b) A person may re-apply for a temporary permit before the issued permit expires, and this permit shall not extend for more than 180 days after the temporary permit is approved by the board for a maximum of 360 days.

(7) Temporary permit holders shall not practice telehealth outside of Kentucky, which means that the location of the temporary permit holder and the client at the time of service shall must be in Kentucky.

(8) The applicant shall pay the required fee for the permit and any renewal.

(9) Receipt of applications, contracts, and notification of approvals may can be done by mail or electronically.

Section 2. Temporary Permits to Practice Clinical Social Work without the Examination.

(1) In addition to the requirements established in Section 1(1), (2), (6), and (7) through (9) of this administrative regulation, a certified social worker who seeks to practice clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070[Section 1(1), (2), (7), (8), and (9) are the same for this section].

(2) [A certified social worker who seeks to practice clinical

social work under a temporary permit shall be under the supervision of a licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070.

~~(3)]~~ A person practicing under a temporary permit as a certified social worker to provide clinical social work shall not accumulate hours toward[towards] the supervision requirements of KRS 335.100(1)(b).

~~(3)](4)]~~ The application for a temporary permit to practice clinical social work shall include a contract or [a] letter signed by the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

~~(4)](5)]~~ A licensee shall not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

~~(5)](6)]~~ A licensed clinical social worker who qualifies to provide supervision under 201 KAR 23:070 shall must include temporary permit persons in the required limit of six (6) supervisees as supervisor of record.

~~(6)](7)]~~ Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face, or virtual supervision per week.

~~(7)](8)]~~ A person practicing under a temporary permit as a certified social worker to provide clinical social work shall be valid until the applicant for the Certified[Certifies] Social Work license is denied under the provisions of KRS 335.080, or the temporary permit expires.

~~(8)](9)]~~ The temporary permit to practice clinical social work shall only be issued with an approved contract as required in KRS 335.080(3).

(a) The temporary permit applicant shall must complete the temporary permit application that includes a contract with an approved supervisor.

(b) The temporary permit remains in effect until a new contract is approved after the Certified Social Work license is issued under KRS 335.080, even when the maximum of 360 days of the permit is exceeded.

(c) A new application for a temporary permit shall be submitted to the board immediately for approval if the supervisee changes his or her[their]:

1. Supervisor of record; or

2. Place of employment.

~~(9)](10)]~~ A temporary permit holder shall cease and desist the practice of clinical social work if:

(a) The supervisor of record terminates supervision; or

(b) The temporary permit holder ceases employment listed on the application.

~~(10)](11)]~~ Any changes to the terms of the temporary permit to practice clinical social work shall be submitted to the board and approved by the board before the temporary permit holder continues social work practice.

~~(11)](12)]~~ Temporary permit holders who violate the provisions of this[the] section shall be are subject to disciplinary action by the board.

Section 3. Temporary Permits for Out-of-state Independent Clinical License Holders. If requested, a temporary permit may can be issued for clinical social work practice in Kentucky if requested, as prescribed when:

(1) A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety (90) consecutive days in one (1) calendar year from the date the[of] application is approved.

~~(2) [A temporary permit to provide clinical social work in Kentucky may be granted for not more than ninety consecutive days in one (1) calendar year from the date of application is approved.~~

~~(3)]~~ A temporary permit holder under this section[provision] shall be is subject to the complaint procedures of the Kentucky Board of Social Work. [Any] Complaints shall be are reportable to the license board of the jurisdiction where the temporary permit holder or [a] applicant is licensed.

~~(3)](4)]~~ The temporary permit applicant shall is not be a resident of Kentucky.

~~(4)](5)]~~ The temporary permit holder shall inform

~~clients[person informs the client]~~ of the limited nature of ~~his or her[their]~~ services and that ~~he or she[the person]~~ is not currently licensed in Kentucky.

~~(5)[(6)]~~ The ~~temporary~~ permit ~~holder or~~ applicant ~~shall have[has]~~ no complaints filed against their license in their current jurisdiction or in the National Practitioner Database or the Public Protection Database.

~~(6)[(7)]~~ A ~~temporary~~ permit holder ~~or applicant~~ may be required to submit billing records or other records to demonstrate compliance with the requirements of this section.

~~(7)[(8)]~~ The ~~temporary~~ permit holder ~~applicant shall[must]~~ pay the required fee for the permit.

~~(8)[(9)]~~ The ~~temporary permit holder[applicant]~~ shall maintain licensure in the other jurisdiction during the time period of the temporary license.

~~(9)[(10)]~~ ~~The person informs the client of the limited nature of their services and that the person is not currently licensed in Kentucky.~~

~~(11)[(12)]~~ The ~~temporary permit holder shall inform clients[person informs the client]~~ of how to make a complaint to the board for improper practice.

~~(10)[(12)]~~ The ~~temporary~~ permit holder ~~shall be[is]~~ allowed to practice telehealth in Kentucky ~~if[so long as]~~ the permit holder:

(a) Provides evidence to the board of appropriate training for telehealth practice;

(b) Is complying with all telehealth laws and regulations of Kentucky; and

(c) Has written consent for telehealth with clients.

Section 4. Temporary Permits for Out-of-state Social Workers. ~~If requested,~~ a temporary permit ~~may[can]~~ be issued for social work practice in ~~Kentucky[this state, if requested,]~~ for not more than ninety ~~(90)~~ consecutive days during any one ~~(1)~~ calendar year from the date of application approval. ~~[as prescribed when:]~~

~~(1)~~ ~~A temporary permit for an out-of-state social worker may be granted to~~ a person who is currently licensed, certified, or regulated pursuant to another jurisdiction or pursuant to the laws of a federally recognized tribe and who provides social work services within the person's scope of practice. ~~[,]~~

~~(2)~~ A temporary permit holder under this ~~section[provision]~~ ~~shall be[is]~~ subject to the complaint procedures of the Kentucky Board of Social Work. ~~[Any.]~~ Complaints ~~shall be[are]~~ reportable to the license board of the jurisdiction where the permit holder ~~or~~ ~~[/]~~ applicant is licensed.

~~(3)~~ The ~~temporary permit applicant shall seek[person seeks]~~ permission to practice social work within the state of Kentucky.

~~(4)~~ The ~~temporary permit applicant shall not be[person is not]~~ a resident of Kentucky.

~~(5)~~ The ~~temporary permit applicant shall pay[person pays]~~ the required fee.

~~(6)~~ The ~~temporary permit applicant shall complete[person completes]~~ the required application and ~~be[is]~~ approved.

~~(7)~~ The ~~temporary permit holder shall cease practicing[person ceases practice]~~ when the permit expires.

~~(8)~~ The ~~temporary permit holder shall have[person has]~~ no disciplinary actions against their license in their current jurisdiction.

~~(9)~~ ~~[A temporary permit holder under this provision is subject to the complaint procedures of the Kentucky Board of Social Work. Any complaints are reportable to the license board of the jurisdiction where the permit holder/applicant is licensed.]~~

~~(10)[(11)]~~ The ~~temporary permit holder shall provide[person provides]~~ evidence to the board of appropriate training for social work telehealth practice.

~~(10)[(11)]~~ The ~~temporary permit holder shall inform clients[person informs the client]~~ of the limited nature of ~~his or her[their]~~ services and that ~~he or she[the person]~~ is only temporarily licensed in Kentucky.

~~(11)[(12)]~~ The ~~temporary permit holder shall inform clients[person informs the client]~~ of how to make a complaint to the board for improper practice.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Temporary Non-Clinical Social Work Application", 6/15/2023;

(b) "Temporary Clinical Social Work Application", 6/15/2023;

(c) "Temporary Non-Resident Social Work Application", 6/15/2023; ~~[and]~~

(d) "Temporary Social Work Non-Clinical and Non-Resident Application", 6/15/2023; ~~and[6/15/2023.]~~

~~(e) "Application for Temporary License Renewal", 7/19/2023.~~

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BOARDS AND COMMISSIONS

Board of Social Work

(As Amended at ARRS, December 11, 2023)

201 KAR 23:170. Telehealth and social work practice.

RELATES TO: KRS 335.158

STATUTORY AUTHORITY: KRS 335.158(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.158(1) requires social workers utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. **KRS 335.158(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of clinical social work services and in the provision of continuing education.** This administrative regulation protects the health and safety of individuals and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth by social workers who utilize telehealth in the provision of social work services, and the provision of continuing education.

Section 1. Definitions.

(1) "Client" is defined by 201 KAR 23:080, Section 1.

(2) "Clinical social worker" means a licensed clinical social worker or a certified social worker under the supervision of a licensed clinical social worker.

(3) "Electronic social work service" means the use of Technology-Enabled Modalities and other electronic means to:

(a) Provide information to the public;

(b) Deliver social work services to clients;

(c) Communicate with clients;

(d) Manage confidential information, personally identifiable information, protected health information, and financial and case records;

(e) Deliver services through videoconferencing, electronic mail, text, chat, facsimile, virtual, ~~[/]~~ augmented, ~~[/]~~ extended, ~~or~~ ~~[/]~~ mixed reality, artificial intelligence, standard audio-only telephone, or digital and analog methods;

(f) Store and access information about clients;

(g) Provide synchronous telehealth or asynchronous telehealth; and

(h) Arrange payment for professional services.

(4) "Telehealth" is defined ~~by[in]~~ KRS 335.158(3) and 211.332(5).

(5) "Telehealth service" means any service provided via electronic means that utilizes the social worker's skills, knowledge, and training for a client: ~~[,]~~

(a) Event;

- (b) Encounter;
- (c) Consultation;
- (d) Visit;
- (e) Store-and-forward transfer;
- (f) Remote patient monitoring;
- (g) Referral; or
- (h) Treatment.

(6) **"Telehealth Terminology Glossary" in 900 KAR 12:005 is incorporated by reference.**

(7) "Teletherapy" means the practice of clinical social work as defined **by**(in) KRS 335.020 and 201 KAR 23:070, **and**

Section 2. Standards of Practice. **(1) Upon initial contact with a potential client and with the client thereafter,** all licensees using telehealth to deliver telehealth, teletherapy, or electronic social work services shall **upon initial contact with a potential client and with the client thereafter**.

(a)(1) Make reasonable attempts to verify and document the identity of the **client**(client(s)).

(b)(2) Make reasonable attempts to verify and document the physical location of the **client**(client(s)).

(c)(3) Obtain alternative means of contacting the **client**(client(s)) other than **including** electronically;

(d)(4) Provide how communications can be directed to the social worker other than electronically;

(e)(5) Assess and document that the client's needs are appropriate for telehealth, teletherapy, or electronic social work services and that the client has the necessary knowledge and skill to benefit from telehealth, teletherapy, or electronic social work services provided by the social worker;

(f)(6) Use secure communications with clients, including encrypted text messages, email, non-public remote communication facing products, or secure internet sites; **and**

(g)(7) Not use personally identifying information or PHI in non-secure communications without expressed written and periodically reviewed informed consent to use non-secure communication; **and**

(h)(8) Obtain written informed consent for telehealth, teletherapy, or electronic social work services that **includes**(include).

1.(a) The informed consent as required 201 KAR 23:080;

2.(b) The client's right to request in-person visits; **and**

3.(c) The limitations of using technology in the provision of services;

(i)(9) **Disclose the** potential risks to privacy and confidentiality of information due to the use of technology in the provision of services **including**; **and**

1.(a) The potential risks of disruption in the use of technology;

2.(b) When and how the social worker utilizes electronic messages;

3.(c) The circumstances in which the social worker **may**(will) use alternative communications for emergency purposes, including medical, psychiatric, or other emergencies;

4.(d) The identity of anyone who may have access to client communications with the social worker;

5.(e) Identification of the social worker, their credentials, and the **jurisdiction**(jurisdiction(s)) of licensed practice;

6.(f) How or when recording of services **may be**(is) permitted by either the licensee or the client; **and**; **and**

7.(g) How electronic signatures are obtained; **and**

(i)(10) **The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.**

(11) Provide how the social worker stores and disposes of recordings or electronic communications from the client; **and**; **and**

(k)(12) Document in the client's record that a service was provided by electronic social work service within forty-eight (48) hours of the service, including any technical difficulties and adherence to all standards of care; **and**

(2) The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.

(3)(13) All licensees using telehealth, teletherapy, or electronic social work services to deliver social work services shall adhere to the same or appropriately adapted standards of care as in-person care.

(4)(14) All licensees shall be aware of the terminology and concepts defined in the Telehealth Terminology Glossary **including**, **such as, but not limited to,** asynchronous telehealth, clinical text **or** /chat, distant site, and originating site.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records.

(1) A social worker using telehealth, teletherapy, or electronic social work services to deliver social work services shall:

(a) Limit the practice of telehealth or teletherapy, or electronic social work services to the area of competence in which proficiency has been gained through education, training, and experience;

(b) Maintain current competency in the practice of telehealth, teletherapy, or electronic social work services through continuing education, consultation, or other methods, in conformance with standards of care and professional knowledge;

(c)(2) Document the client's presenting problem, service needs, care plan, treatment, diagnosis, or reasons for social work services;

(d)(3) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the social worker disposes of electronic equipment and data;

(e)(4) Ensure the availability and integrity of digital records;

(f)(5) Have a set and disclosed retention period for secure storage of records, recordings, or electronic communications; **and**

(g)(6) Provide services only within their scope of practice.

(2)(3) Licensees providing clinical social work under supervision by an approved LCSW supervisor shall:

(a) Disclose all telehealth, teletherapy, or electronic social work services in the contract for supervision required under 201 KAR 23:070 or 201 KAR 23:160; **and**; **and**

(b) Comply with the directives of the board.

(3)(4) A social worker licensed in another jurisdiction and using telehealth, teletherapy, or electronic social work services to deliver social work services to a client located in Kentucky at the time of service or is located in Kentucky at the time of service shall have a temporary permit to provide services or be licensed in Kentucky.

Section 4. Continued Education.

(1) All licensees shall attain or maintain their competence to deliver telehealth, teletherapy, or electronic social work services through appropriate supervision and continued education.

(2) All new licensees shall take a board approved two **(2)**-hour course once within their first license cycle on the regulations for delivering telehealth, teletherapy, or electronic social work services.

(3) All current licensees shall take a two **(2)**-hour course on the regulations for delivering telehealth, teletherapy, or electronic social work services approved by the board by June 30, 2024.

(4) Continued education presented as an electronic social work service shall comply with 201 KAR 23:075.

Section 5. Compliance with Federal, State, and Local Law. All licensees using telehealth to deliver social work services or teletherapy, or electronic social work services shall comply with **the following**:

(1) The federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9, any amendments or changes subsequently included, and other applicable federal and state laws; **and**

(2) The laws and regulations of the jurisdiction in which they are located, and in which the client is located at the time service is rendered, and under KRS 211.336(2)(i) when not in conflict with another state's laws; **and**

(3) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to allow telehealth, teletherapy, or electronic social work services accessible to a client with disabilities.

Section 6. Representation of Services and Code of Conduct. A

licensee using telehealth to deliver social work services or teletherapy, or electronic social work services:

- (1) Shall not, by or on behalf of the social worker, engage in false, misleading, or deceptive advertising of services via telehealth, teletherapy, or electronic social work services;
- (2) Shall not employ fee-splitting with other telehealth persons or entities;
- (3) Shall comply with 201 KAR 23:080, Code of ethical conduct; and
- (4) Shall comply with all applicable administrative regulations.

Section 7. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email marc.kelly@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, December 11, 2023)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

RELATES TO: KRS 61.878(1)(c), 224.1-400, 224.1-405, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.60-110, 224.60-120, 224.60-130, 224.60-135, 224.60-140, 224.60-150, 40 C.F.R. 280, Subpart H

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) - [through](e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators. This administrative regulation establishes procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

Section 1. Applicability.

(1) This administrative regulation shall establish~~[establishes]~~ the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application, become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective action due to a release from a petroleum storage tank.

(2) Federally owned facilities shall not be eligible for reimbursement from the PSTEAF in accordance with KRS 224.60-115(16).

(3) Eligible reimbursement~~[for actions directed by the Underground Storage Tank (UST) Branch prior to October 6, 2014]~~ shall be made in accordance with the reimbursement administrative regulations in effect at the time work was performed.

Section 2. Application for Assistance for Reimbursement.

(1) A petroleum storage tank owner or operator seeking reimbursement from the Financial Responsibility Account (FRA) or the Petroleum Storage Tank Account (PSTA), shall:

(a) In accordance with 401 KAR 42:020, submit to the UST Branch a complete and accurate UST Facility Registration, DWM

4225, incorporated by reference in 401 KAR 42:020;

(b) Complete and submit a UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments;

(c) Enter into and submit, a contract in accordance with Section 3 of this administrative regulation;

(d)1. Document that a release requiring corrective action from a petroleum storage tank has occurred; or

2. Receive a written directive from the UST Branch or Emergency Response Branch, in accordance with 401 KAR 42:060; and

(e) Subrogate, to the cabinet, the rights to recover costs of corrective action, for which the cabinet has compensated the person seeking reimbursement, from the person responsible or liable for the release in accordance with KRS 224.60-140(14)(c).

(2) If an application for assistance is found deficient by the UST Branch, a written correspondence, stating the deficiencies, shall be issued to the applicant.

(a) Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application for assistance to be denied.

(b) Denial of the application for assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.

(3) If the applicant complies with the requirements of subsection (1) of this section, the UST Branch shall determine the eligibility of the applicant to receive reimbursement from either the FRA or PSTA, in accordance with Section 4 of this administrative regulation, and shall issue a written approval of the application for assistance.

(4) Reimbursement in accordance with an approved application for assistance shall be restricted to:

(a) Actions directed in writing by the UST Branch or Emergency Response Branch; and

(b) Initial and immediate response actions taken at a facility, prior to a written directive~~[from the UST Branch]~~, and not declared an environmental emergency by the cabinet, and subject to the reimbursement provisions established in Section 3.13 of the UST PSTEAF Reimbursement Rates.

(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes and the new petroleum storage tank owner or operator assumes responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall submit an amended:

(a) UST Facility Registration, DWM 4225, incorporated by reference in 401 KAR 42:020, in accordance with 401 KAR 42:020, Section 2(4), indicating a change in petroleum storage tank owner or operator; and

(b) UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments, within thirty (30) days of the transfer of the petroleum storage tank.

(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administrative regulation.

Section 3. Contracts.

(1) A petroleum storage tank owner or operator shall obtain a contract from an eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities at a facility.

(2) In accordance with KRS 224.60-130(1)(a), an eligible company or partnership shall not require payment from an applicant in an amount greater than the reimbursable amount.

(3) The contract shall be executed prior to commencing corrective action or site check activities.

(4) If a contract is revised, a copy of the revised contract shall be submitted to the UST Branch within thirty (30) days of the revised contract execution.

(5) If a contract is terminated and a new contract is executed:

(a) The petroleum storage tank owner or operator approved for PSTEAF reimbursement shall submit a notarized UST Affidavit of Termination of PSTEAF Contract, DWM 4280, to the UST Branch; and

(b) A copy of the newly executed contract shall be submitted to the UST Branch within thirty (30) days of contract execution[;] and

prior to the commencing of corrective action or site check activities by the new eligible company or partnership.

Section 4. Account Placement.

(1) ~~If [When]~~ participating in the FRA, a petroleum storage tank owner or operator shall be eligible to receive reimbursement for:

(a) Corrective action costs; and

(b) Site check activities directed in writing by the UST Branch after September 13, 2006, that do not confirm contamination above applicable screening levels; and

(c) Third-party claims in accordance with Section 12 of this administrative regulation, incurred on or after April 9, 1990, if the petroleum storage tank owner or operator has:

1. (a) Registered the petroleum storage tanks with the UST Branch, in accordance with 401 KAR 42:020, prior to the release requiring corrective action or site check activities;

2. (b) Maintained UST system release detection as required by 401 KAR 42:020. A petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:060, shall have been in compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

3. (c) Maintained corrosion protection for the petroleum storage tank system in accordance with 401 KAR 42:020;

4. (d) Maintained overflow and spill prevention for the petroleum storage tank system in accordance with 401 KAR 42:020 for those tanks in use after December 22, 1998;

5. (e) Reported the release to the cabinet in accordance with KRS 224.1-400(11) and 401 KAR 42:060;

6. (f) Performed initial abatement procedures as required by the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; and

7. (g) Submitted to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank or Piping[System], DWM 4266, incorporated by reference in 401 KAR 42:060, if applicable.

(2) A petroleum storage tank owner or operator that is not eligible for participation in the FRA, shall be eligible for reimbursement from the (PSTA) for corrective action costs, incurred on or after April 9, 1990, or site check activities directed in writing by the UST Branch after September 13, 2006, that do not confirm contamination above applicable screening levels, if the petroleum storage tank owner or operator has registered the petroleum storage tanks with the UST Branch in accordance with 401 KAR 42:020.

Section 5. Entry Level.

(1) ~~[For facilities with releases confirmed after September 13, 2006,]~~ A petroleum storage tank owner's or operator's entry level shall be equal to the financial responsibility requirement, as established in KRS 224.60-120(1), and shall be deducted from the eligible reimbursement, except as established in subsection (3) of this section.

(2) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the FRA and PSTA in accordance with subsection (1) of this section, regardless of a petroleum storage tank owner's participation in the Small Owner Tank Removal Account (SOTRA) in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the eligible reimbursement if the petroleum storage tank owner or operator performs:

(a) A site check directed by the UST Branch in accordance with 401 KAR 42:060, that does not confirm contamination requiring further action in accordance with 401 KAR Chapter 42;

(b) An initial and immediate response action in accordance with Section 2.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(c) Optional soil removal outside the excavation zone during permanent closure in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(d) Transportation and disposal of excavated material contaminated above applicable screening levels within the excavation

zone during permanent closure in accordance with 401 KAR 42:060; or

(e) Transportation and disposal of pit water contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(4) Upon request by the petroleum storage tank owner or operator, the UST Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil contamination only; or

2. Twenty-four (24) months from the discovery of the release, for groundwater contamination only or both soil and groundwater contamination; and

(b) Been issued a no further action letter without additional measures being required for an occurrence associated with the submittal of a UST ~~[an]~~ Application for Assistance for PSTEAF, DWM 4282.

(5) The applicable entry level shall be equal to the financial responsibility requirement as established in KRS 224.60-120(1), based on the number of tanks owned or operated by the petroleum storage tank owner or operator at the time of the occurrence associated with the submittal of an application for assistance.

Section 6. Newly Discovered UST Systems.

(1) A newly discovered UST system encountered at a facility during the performance of corrective action due to a release from a registered petroleum storage tank shall not affect a petroleum storage tank owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the petroleum storage tank owner or operator.

Section 7. Establishing the Reimbursable Amount for a Written Directive.

(1) The reimbursable amount established for the completion of a written directive issued by the UST Branch shall be based on:

(a) The formulated task rates established in Section 3.0 of the UST PSTEAF Reimbursement Rates; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, a cost estimate shall be submitted by the owner or operator.

(2) The cost estimate shall include:

(a) A cost itemization to complete the individual task using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates applicable to individual components of the task;

(b) Three (3) bids from suppliers or manufacturers of corrective action equipment for individual equipment purchase or rental, exceeding \$3,000, if applicable, containing a description of the equipment provided by the supplier or manufacturer; and

(c) An estimate for materials to be purchased, if applicable.

(3) The UST Branch shall establish the reimbursable amount in a written directive based on the formulated task rates established in the UST PSTEAF Reimbursement Rates and applicable, approved, cost estimates.

(4) The cabinet shall attach to the written directive:

(a) An itemization of the reimbursable amount; and

(b) A UST Claim Request for Directed Actions, DWM 4286.

(5) The issuance of a written directive by the UST Branch shall, contingent upon compliance with~~[subject to]~~ the provisions of Section 8 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written directive, in accordance with KRS 224.60-140(5).

(6) Upon compliance with Section 8 of this administrative regulation, the reimbursable amount established by the UST Branch in a written directive shall, as applicable and in accordance with the UST PSTEAF Reimbursement Rates, be adjusted as established in this subsection.

(a) The reimbursable amount for over-excavation identified in the written directive issued by the UST Branch is an estimate of the tonnage to be removed and shall be based on the volume and

density of material in the proposed excavation area. The UST Branch shall convert cubic yardage to tons using a density of one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

1.a. The soil tonnage verified through the submittal of weigh tickets; or

b. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation, not to exceed the tonnage estimate identified in the written directive from the UST Branch; and

2. The actual quantity of water encountered during an over-excavation that is removed, transported, and disposed of, contingent upon analytical confirmation that contaminant levels of the water exceed the applicable groundwater screening levels, and as documented by disposal manifests and limited to one (1) pit volume.[:]

(b) The reimbursable amount for a Mobile Dual-Phase Extraction Event, identified in a written directive issued by the UST Branch, shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site.[:]

(c) The reimbursable amount for operation and maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted.[:]

(d) If the UST Branch has not received and approved the UST Application for Assistance for PSTEAF, DWM 4282, prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates, once an approved UST Application for Assistance for PSTEAF, DWM 4282, is submitted.[:]

(e) If the UST Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates, once the requirements of Section 3 of this administrative regulation are met.[:]

(f) If a written directive issued by the UST Branch cannot be complied with to the extent necessary to achieve a technically complete determination by the UST Branch, in accordance with 401 KAR 42:060, for reasons beyond the control of the applicant, or eligible company or partnership, the previously approved reimbursable amount established in the written directive shall, unless addressed in the written directive, be adjusted by the UST Branch, with reference to the UST PSTEAF Reimbursement Rates and the applicable, approved cost estimate, to deduct the cost of actions not completed.[:or]

(g) If the UST Branch rescinds an issued written directive prior to the completion of the entire scope of work identified in the written directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with reference to the UST PSTEAF Reimbursement Rates and the approved cost estimate, if applicable.

(7) Reimbursement for an individual corrective action equipment purchase or rental shall not include markup and shall be limited to:

(a) The original purchase price provided by the supplier or manufacturer, including applicable sales tax, if purchased; or

(b) Rental costs not exceeding the purchase price provided by the supplier or manufacturer, if rented.

(8) The UST Branch shall have final authority to determine all reimbursable actions including site characterization and corrective action technologies in accordance with 401 KAR 42:060.

Section 8. Reimbursement for a Written Directive.

(1) Reimbursement for a written directive shall be made after ***the following actions are completed***:

(a) The submittal and approval of a UST Application for Assistance for PSTEAF, DWM 4282, in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request for Directed Actions, DWM 4286, which shall include ~~a~~*includes* payment verification affidavit as required by KRS 224.60-140(18), ~~[provided—]~~with the written directive that has been completed, signed, and submitted to the UST Branch;

(c) The submittal of a UST Payment Waiver, DWM 4289, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d) The submittal of weigh tickets and invoices documenting the actual cost of items that do not have a formulated task rate established in the UST PSTEAF Reimbursement Rates or other required backup documentation as indicated in the written directive;

(e) The technical report submitted in response to the written directive once determined by the UST Branch to be technically complete in accordance with the written directive and 401 KAR 42:060; and

(f) Payment has been received for all applicable annual fees in accordance with KRS 224.60-150 and 401 KAR 42:020, Section 2.

(2) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with the requirements established in accordance with Section 19 of this administrative regulation.

(3) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation.

(4) If the contract with the eligible company or partnership designated on a written directive is terminated prior to the commencement of reimbursable activities in response to the written directive, the obligation and guarantee of payment of the reimbursable amount shall be void.

(5) The information completed by the UST Branch on the UST Claim Request for Directed Actions, DWM 4286, attached to the written directive, shall not be modified by the applicant or the eligible company or partnership designated on the written directive.

(6) If the applicant fails to correct a claim-related deficiency or to supply additional claim information, within thirty (30) days of written notice from the UST Branch, that portion of the claim shall be denied.

(7) The UST Branch shall issue a determination in accordance with KRS 224.60-140(7) as to whether or not the costs submitted in the claim are eligible for reimbursement.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST Branch, in accordance with KRS 224.60-130(1)(n).

(9) If a request to re-evaluate the reimbursable amount, established in accordance with Section 7 of this administrative regulation, is submitted in accordance with Section 14 of this administrative regulation, and a not-to-exceed amount is warranted, final reimbursement shall be made on a time and material basis, which shall require ~~the following supporting documentation~~:

(a) An itemization of the eligible company or partnership invoice with supporting documentation;

(b) Itemized subcontractor and vendor invoices with supporting documentation; and

(c) Time sheets to support all personnel time billed for the completion of the scope of work identified in the written directive.

Section 9. Reimbursement for Actions Not Directed in Writing.

(1) Reimbursement shall be made for the following actions in accordance with the applicable formulated task rates established in the UST PSTEAF Reimbursement Rates:

(a) Optional Soil Removal Outside the Excavation Zone at permanent closure, in accordance with Section 4.16 of the UST Corrective Action Manual incorporated by reference in 401 KAR 42:060;

(b) Transportation and disposal, treatment, or recycling, at a

permitted facility, of material or water contaminated above applicable screening levels, removed from within the excavation zone, at permanent closure, in accordance with the UST Corrective Action Manual incorporated by reference in 401 KAR 42:060;

(c) Initial and immediate response actions, identified in Section 3.13 of the UST PSTEAF Reimbursement Rates, taken at a facility in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, prior to a written directive from the UST Branch or prior to the date of a declared environmental emergency by the cabinet;

(d) Transportation and disposal of drums containing purged water or soil cuttings associated with actions directed in accordance with 401 KAR 42:060;

(e) Encroachment permit renewals necessary to complete directed actions; and

(f) Unscheduled maintenance of a remediation system installed in accordance with approved corrective action activities. Pre-approval shall be required for one (1) unscheduled maintenance event that will exceed \$3,000 for material and equipment.

(2) Reimbursement shall be made after ~~the following actions are completed~~:

(a) The approval of a UST Application for Assistance for PSTEAF, DWM 4282, in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request for Actions Not Directed, DWM 4285, which ~~shall include the~~~~[includes]~~ payment verification affidavit as required by KRS 224.60-140(18), ~~that~~ has been completed, signed, and submitted to the UST Branch;

(c) The submittal of a UST Payment Waiver, DWM 4289, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d) The submittal of required backup documentation as identified on the instruction sheet associated with each worksheet;

(e) Payment has been received for all applicable annual fees in accordance with KRS 224.60-150 and 401 KAR 42:020, Section 2;

(f) The UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet, DWM 4288, has been completed and submitted to the UST Branch for optional soil removal outside of the excavation zone at permanent closure in accordance with 401 KAR 42:060 for actions listed in subsection (1)(a) of this section, if applicable;

(g) The UST Miscellaneous Tasks Reimbursement Worksheet, DWM 4287, has been completed and submitted to the UST Branch for actions listed in subsection (1)(b), (c), (d), (e), or (f) of this section, if applicable; and

(h) The technical report submitted in accordance to subsections (1)(a), (b), or (c) of this section has been deemed technically complete, if applicable, in accordance with 401 KAR Chapter 42.

(3) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with the requirements established in accordance with Section 19 of this administrative regulation.

(4) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation.

(5) The UST Branch may require additional information and documentation, if necessary to determine that a request for reimbursement is reasonable and necessary.

(6) If the applicant fails to correct a claim-related deficiency, or to supply additional claim information, within thirty (30) days of written notice from the ~~cabinet~~~~[UST Branch]~~, that portion of the claim shall be denied.

(7) The UST Branch shall issue a determination, in accordance with KRS 224.60-140(7), as to the eligibility for reimbursement of the costs submitted in the claim.

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST Branch in accordance with KRS 224.60-130(1)(n).

Section 10. Facility Restoration.

(1) The UST Branch shall issue a written directive in accordance with Section 7 of this administrative regulation, once the applicant provides the information required by Section 5.9.2 in the UST

Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(2) If the UST Branch does not issue a written directive in accordance with subsection (1) of this section, the applicant may submit an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions.

(3) Reimbursement for facility restoration activities shall be made in accordance with Section 8 of this administrative regulation.

Section 11. Payment for Actions Directed by the Environmental Response Team. Payment for actions directed and documented by the Environmental Response Team during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with KRS Chapter 224.

Section 12. Third-Party Claims.

(1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or non-sudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the FRA.

(2) A petroleum storage tank owner or operator shall be eligible to apply for reimbursement or payment for a third-party claim if:

(a) The cabinet has approved an application for assistance in accordance with Section 2(3) of this administrative regulation; and

(b) The owner or operator has maintained compliance with the eligibility requirements for participation in the FRA in effect at the time the application for assistance was approved.

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the FRA in accordance with Section 4 of this administrative regulation, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

(4) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new UST Application for Assistance for PSTEAF, DWM 4282; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of service of process of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(5) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, upon review and concurrence by the cabinet.

(6)(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment, or reimburse an owner or operator for payment of the judgment, in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

(7) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(a) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(b)1. The aggregate amount of payment of all third-party claims shall not exceed \$1,000,000 per occurrence.

2. Claim requests shall be submitted on the UST Third-Party Claim, DWM 4292.

(c) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(d) Reimbursement for third-party claims shall be made in accordance with Section 21 of this administrative regulation.

(e) Payment of a third-party claim shall be made after approval by the cabinet.

Section 13. Eligible and Ineligible Costs.

(1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Initial and immediate response actions directed by or approved by the UST Branch or Emergency Response Branch~~[taken outside of the excavation zone,]~~ in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060~~[, prior to a written directive from the UST Branch or prior to the date of a declared emergency by the cabinet];~~

(b) Site checks at a facility, in accordance with a written directive issued after September 13, 2006 by the UST Branch;

(c) Tank and line tightness testing as requested in writing by the UST Branch in conjunction with site check, site investigation, or corrective action activities for a facility;

(d) Performance of "corrective action" as defined by KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the UST Branch;

(e) Transportation, disposal, or treatment at a permitted facility, and replacement of excavated material, contaminated above applicable screening levels:

1. Within the excavation zone, excluding the tank volume, in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; or

2. Outside the excavation zone, in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(f) Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water, contaminated above screening levels encountered:

1. Within the excavation zone, during activities in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; and

2. During activities in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(g) A fifteen (15) percent total markup above the invoice~~[cost of materials purchased]~~ associated with a task for which there is not a formulated task rate established in the UST PSTeAF Reimbursement Rates;

~~(h) [An eligible company or partnership that employs an unaffiliated subcontractor or other vendor shall receive a fifteen (15) percent markup for costs that do not have a formulated task rate established in the UST PSTeAF Reimbursement Rates;]~~

~~[(i)]~~ Surface material to replace removed or damaged areas directly associated with corrective action activities, upon written direction by the UST Branch; and

~~[(j)]~~ Other costs, associated with corrective action activities, as required in a written directive issued by the UST Branch for the facility.

(2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Except as established in subsection (1) of this section, costs incurred prior to written approval by the UST Branch;

(b) Costs incurred for the purpose of complying with the requirements of 401 KAR 42:020;

(c) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(d) A cost associated with a release from a storage tank exempt from requirements of 401 KAR Chapter 42, as established in KRS 224.60;

(e) A cost or cost recovery for governmental emergency services;

(f) A cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(g) Preparation of documentation, cost estimates, written agreements, contracts, or client invoices that will be submitted to the UST Branch for reimbursement purposes;

(h) Except as established in 401 KAR 42:330, costs related to

the removal~~[,]~~ or actions incidental to the removal of a tank system;

(i) Road mileage beyond 1,000 miles round trip;

(j) Reimbursement for work or a portion of work, performed at a facility if the results of laboratory analysis do not confirm the need for corrective action, or for actions to achieve contaminant concentrations less than those directed by the cabinet, except for investigatory or corrective actions directed from the UST Branch in writing;

(k) Work performed that is not in compliance with safety codes;

(l) Free product recovery from monitoring wells or borings during corrective action activities, unless directed in writing by the UST Branch;

(m) Costs incurred to replace a monitoring well destroyed, damaged, or that cannot be accessed or located due to actions within the control of the applicant;

(n) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(o) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;

(p) Costs relating to compliance with a local program having corrective action standards more stringent than those directed by the cabinet;

(q) A laboratory "rush" fee, unless directed by the UST Branch;

(r) Costs of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or costs for an analytical laboratory to become certified or accredited in accordance with the requirements of KRS 224.60-130(1)(a) and Section 20 of this administrative regulation;

(s) Laboratory costs incurred after the laboratory certification eligibility expiration date;

(t) Costs incurred for additional assessment or corrective action plan modification necessary as a result of delayed implementation of the corrective action plan, beyond the deadline established in writing by the UST Branch;

(u) Costs incurred as a result of delayed implementation of a written directive, beyond twelve (12) months from the issuance date of the deadline established in writing by the UST Branch;

(v) The portion of a lease or rental cost for capital equipment that exceeds the purchase price of the equipment;

(w) Equipment replacement costs covered by equipment warranty;

(x) Payment of the owner's or operator's personnel for overtime or for staff time in planning or implementing "corrective action" as defined by KRS 224.60-115(4);

(y) Out-of-state travel expense, including air fare;

(z) Contractor markup expense for a normally expected overhead item or in-stock material;

(aa) Contractor markup expense for personnel costs;

(bb) Markup for pass-through costs for utilities and employee expense accounts;

(cc) Fifteen (15) percent markup for the costs of corrective action for an eligible company or partnership that employs a subcontractor, a subsidiary company, or other vendor, that is affiliated with the eligible company or partnership or a principal of the eligible company or partnership;

(dd) Except as directed by or approved by the cabinet during an emergency response in accordance with subsection (1)(a) of this section, overtime for eligible company or partnership personnel exceeding forty (40) hours, individually, during a standard workweek;

(ee) Actions resulting from contractor error or negligence;

(ff) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(gg) Costs covered by the contractor's liability insurance;

(hh) Costs covered by insurance payable to the owner or operator;

(ii) Interest on an overdue account or loan;

(jj) Loss of business, income, or profits;

(kk) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;
 3. Preparation or submittal of documentation related to the reimbursement process; or
 4. Other legal services not integral to the performance of corrective action;
- (ll) Corrective action costs incurred after the eligible company or partnership eligibility expiration date;
- (mm) Corrective action activities performed subsequent to the issuance of a no further action letter, unless directed in writing by the UST Branch;
- (nn) Facility or aesthetic improvements, including costs to upgrade the facility, except for approved surface replacement in accordance with Section 10 of this administrative regulation;
- (oo) Decreased property values for the facility;
- (pp) Costs of surface material replacement for areas not removed or damaged as part of corrective action; and
- (qq) Unreasonable or unnecessary costs and expenses for corrective action, in accordance with KRS 224.60-140(5).

Section 14. Re-Evaluation of a Reimbursable Amount.

- (1) If the applicant determines that the scope of work or portion thereof, required in a written directive cannot be completed without exceeding the [total]-reimbursable amount established[set forth in the written directive], a request for re-evaluation of the reimbursable amount may be submitted to the UST Branch. The request for re-evaluation shall include:[or]
- (a) The UST Re-Evaluation of a Reimbursable Amount, DWM 4291 form;[- and shall include:]
- (b) [(a)] If applicable, [The submittal of] three (3) current written estimates from subcontractors in the area in which the facility is located, for services or materials not provided by the contracting company or partnership[- from subcontractors in the area in which the facility is located, if applicable];
- (c) If applicable, a copy of any previously approved cost estimate that will be used to perform any portion of the directive; and
- (d) [(b)] [The submittal of] An itemized cost breakdown of the eligible company's or partnership's time and materials to be used for the completion of the written directive.[- and]
- [(c)] [The costs calculated using] The personnel[- and equipment] rates established in Section 5.2[3.0] of the UST PSTEAF Reimbursement Rates shall be used for the contracted eligible company employee rate charges.
- (2)(a) The UST Branch shall review the re-evaluation request and determine if a new reimbursable amount shall be established.
- (b) The review shall be based upon[itemized cost breakdown, determine] the reasonable and necessary costs for the scope of work.
- (c) The UST Branch shall include a fifteen (15) percent markup for the contracted eligible company in addition to the total requested amount. The fifteen (15) percent markup shall not apply to personnel rates for the contracted eligible company, which shall be as established in Section 3.0 of the UST PSTEAF Reimbursement Rates.
- (3) If the amount established in accordance with subsection (2) of this section:
- (a) Exceeds the initial reimbursable amount established, the UST Branch shall establish[and:]
- [(a)] [Rescind the original written directive, and issue] a new reimbursable[written directive establishing a not-to-exceed] amount[if the itemized cost breakdown, as adjusted for reasonable and necessary costs, exceeds the reimbursable amount]; or
- (b) Is less than or equal to the initial reimbursable amount established, the UST Branch shall deny the request for re-evaluation[- established in the original directive letter, if costs itemized are at or below the initial reimbursement amount].
- (4)
- [(3)] If the establishment of a new reimbursable[not-to-exceed] amount is warranted, [in accordance with subsection (2)(a) of this section,]-[final reimbursement shall be determined by the UST Branch based upon documentation received and shall include a fifteen (15) percent markup, except for the contracted eligible company personnel rates.[on an actual time and materials basis, and]

(b) The appropriate supporting documentation shall be submitted to the UST Branch, in accordance with Section 8[(9)] of this administrative regulation, as an attachment to the claim.

Section 15. Reconsideration for a Claim.

- (1) An applicant may request a reconsideration of a denial of a claim request, or portion thereof. Reconsideration shall be requested by submitting a completed UST Reconsideration Request, DWM 4290, within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the denial, which shall include:
- (a) A statement of the grounds for reconsideration;
 - (b) Supporting documents; and
 - (c) If applicable, other evidence not previously considered.
- (2) The cabinet shall review the previous claim decision[-] and shall revise the claim if the evidence accompanying the request warrants revision by demonstrating clear error or through submittal of additional documentation.
- (3) The cabinet shall not reconsider a claim more than once without new supporting documentation.

Section 16. Signatures.

- (1) Application and reimbursement forms required by this administrative regulation for which a signature is required shall be signed by:
- (a) An eligible petroleum storage tank owner or operator;
 - (b) Legally authorized representative; or[as follows:]
 - (c) [(a)] [For a corporation or limited liability company, by:]
 - [1.] [A president, vice-president of the corporation in charge of a principal business function, or member, or any other person who performs similar policy- or decision-making functions for the corporation; or]
 - [2.] [A legally authorized representative or agent, except that a representative of an eligible company or partnership shall not have signatory authority for an owner or operator;]
 - [(b)] [For a partnership, sole proprietorship or individual, by:]
 - [1.] [A general partner;]
 - [2.] [Proprietor; or]
 - [3.] [Individual named as the applicant;]
 - [(c)] [For a state or local governmental agency or unit, or non-profit organization, by:]
 - [1.] [A principal executive officer, which includes a chief executive officer of an agency, or a senior executive officer, having responsibility for the overall operations of a principal geographic unit; or]
 - [2.] [A ranking elected official; or]
 - [(d)] A person designated by a court to act on behalf of the eligible petroleum storage tank owner or operator.
- (2) A claim form or application for assistance shall also be signed by an authorized representative of the eligible company or partnership, unless corrective action commenced prior to July 1, 1999.
- (3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 17. Financial Audits.

- (1) The cabinet may, in accordance with subsection (2) of this section, conduct[An entity shall be subject to] a financial audit if the[if it is an] entity is referenced in KRS 224.60-130(1)(k).
- (2) The cabinet shall have the authority to audit an entity if:
- (a) A required document, or other document relevant to a cabinet determination, submitted to the cabinet appears to be fraudulent; or
 - (b) There is evidence that the entity has violated a federal or state law[-] or a requirement of KAR Title 401 [of the Kentucky Administrative Regulations]-[related to its actions.
- (3) Upon written request by the cabinet, records, as established in KRS 224.60-130(l)(k), shall be provided to the cabinet during a financial audit.
- (4) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit

or a rescheduled audit.

(5)(a) If the petroleum storage tank owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible company or partnership or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility, for which costs have been reimbursed by the cabinet.

(6) If the audit by the cabinet finds an improper, irregular, or illegal use of any monies received directly or indirectly from the cabinet, or that the monies were obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.

(7)(a) Reimbursements to an owner or operator that fails to cooperate with an audit shall be grounds for~~subject to~~ recovery by the cabinet.

(b) Failure by an entity, that contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the recovery of funds paid by the cabinet for corrective action services at that facility.

Section 18. Account Balance. (1) The unobligated balance of the FRA shall not be less than \$1,000,000, to ensure a reserve balance adequate to comply with federal financial responsibility requirements for participants in the account.

(2)(a) If the unobligated balance of the FRA is \$1,000,000, or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than \$1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than \$1,000,000.

(b) If the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

(c) During the suspension, all written directives from the cabinet shall be issued in accordance with Section 21 of this administrative regulation.

Section 19. Eligible Companies and Partnerships.

(1) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or partnership shall:

(a) Employ or contract with a professional engineer or a professional geologist;

(b) Be authorized to conduct business in the Commonwealth of Kentucky and remain active, and in good standing, with the Kentucky Secretary of State;

(c) Hold, in good standing, all licenses, permits, training certifications, or other authority required to perform corrective action services, or otherwise conduct business, in Kentucky;

(d) 1. Maintain, at a minimum, general and professional liability insurance and pollution or property coverage in the amount of \$1,000,000; and

2. Add the cabinet as an additional interest on the policy to be notified, by the insurance company, if there is a lapse of insurance coverage;

(e) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet to perform corrective action services;

(f) Submit the UST Application for PSTeAF Eligible Companies or Partnerships, DWM 4284; and

(g) Sign an application or claim payment request in addition to the eligible owner or operator. The eligible company or partnership shall certify that:

1. The information provided in the claim is true and correct; and

2. Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR 42:060 and this administrative regulation.

(2) Application requirements for a company or partnership eligibility shall include submittal of:

(a) A completed UST Application for PSTeAF Eligible Companies or Partnerships, DWM 4284;

(b) Verification of the employment or contracting of a professional engineer or a professional geologist; and

(c) A list of the names and address of officers and principals of the applicant.

(3) The cabinet shall inspect the records and business premises of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(4) The cabinet shall require additional information and documentation if necessary to verify information in the application.

(5) An application for eligible company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not comply with the requirements of subsection (1) of this section;

(c) Fails to allow cabinet staff to access company records for audit purposes in accordance with Section 17 of this administrative regulation;

(d) Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e) Provides false or misleading information in the application; or

(f) Fails to maintain general and professional liability insurance and pollution or property coverage.

(6) An applicant whose application for company or partnership eligibility is denied may appeal the determination. Appeal shall be made, by requesting a reconsideration in accordance with Section 15 of this administrative regulation.

(7) The cabinet shall issue a letter of eligibility to a qualifying applicant.

(8) An amended application for a company or partnership shall be submitted if:

(a) The information in the UST Application for PSTeAF Eligible Companies or Partnerships, DWM 4284, has changed; or

(b) Requested by the cabinet to submit an updated application upon the receipt of information indicating a change to application information.

(9) Eligibility and renewal procedures shall be as established in paragraphs (a) through (d) of this subsection.

(a) The cabinet shall issue a letter of eligibility to each company or partnership that successfully complies with this administrative regulation.

(b) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(c) An application for eligibility renewal shall be submitted to the cabinet on the UST Application for PSTeAF Eligible Companies or Partnerships, DWM 4284.

(d) The failure of the company or partnership, under contract with an owner or operator, to renew eligibility shall render corrective action costs incurred after the expiration date ineligible for reimbursement.

(10) Revocation of eligibility procedures shall be as established in paragraphs (a) and (b)~~(through (d))~~ of this subsection.

(a) A letter of eligibility issued in accordance with this administrative regulation shall be revoked if the eligible company or partnership:

1. No longer complies with the eligibility requirements established in subsection (1) of this section;

2. Employs, or has a business relationship with, an employee or agent that knowingly submits materially false information or documentation, or a false payment request, to an owner, operator, or the cabinet;

3. Has a current officer, director, or principal of that company, that has been convicted of, or found liable for, civil or criminal fraud or an environmental crime;

4. Has failed to comply with the terms established in Section 17 of this administrative regulation; or

5. Obtained eligibility through fraud or misrepresentation.

(b) The cabinet shall issue a letter by certified mail notifying a noncompliant company or partnership that its eligibility has been

revoked by action of the cabinet.

Section 20. Laboratory Certification.

(1) Applicability and requirements for PSTEAF eligibility criteria for laboratory certification shall be as established in this section.

(a) Owners or operators seeking reimbursement from the PSTEAF for analytical testing shall utilize a laboratory certified in accordance with this section.

(b) This section shall apply to analytical testing performed on or after October 1, 1999.

(c) Owners or operators of a petroleum storage tank that fail to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

(2) Certification requirements for laboratory certification shall be as established in paragraphs (a) and ~~(b) through (d)~~ of this subsection.

(a) A laboratory shall demonstrate current accreditation by submitting documentation of certification by:

1. The American Association for Laboratory Accreditation; or

2. A state approved to accredit environmental laboratories, in accordance with National Environmental Laboratory Accreditation Program requirements and standards.

(b) A laboratory seeking certification from the cabinet shall submit:

1. A completed UST Application for Laboratory Certification, DWM 4283; ~~and;~~

2. ~~[1.] [The application shall include:]~~ Proof of accreditation as established in paragraph (a) of this subsection.

~~[2.] [The laboratory shall be capable of analyzing each of the parameters listed in Table 7 and Table 8 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, using at least one (1) of the acceptable methods listed in the tables, except for mobile laboratories.]~~

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

(4) Requirements for maintaining laboratory certification shall be as established in paragraphs (a) through ~~(c) [(d)]~~ of this subsection.

(a) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(b) If a certified laboratory's accreditation, in accordance with subsection (1) of this section, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

~~(c) [1.] [A laboratory holding valid certification from the UST Branch issued prior to October 6, 2014 shall not be required to submit a new UST Application for Laboratory Certification, DWM 4283.]~~

~~[2.] [In order to maintain certification status, the certified laboratory shall comply with this subsection.]~~

~~[(d)]~~ If a certified laboratory fails to maintain certification in accordance with this subsection ~~[of this subsection]~~, the laboratory shall be required to submit a UST Application for Laboratory Certification, DWM 4283, in accordance with subsection (2) of this section.

(5)(a) The cabinet shall revoke a certification if the applicant:

1. Obtains the certification through fraud or misrepresentation; or

2. Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(b) The cabinet shall, within ten (10) days of a revocation determination, notify the laboratory, in writing, of the revocation of certification.

Section 21. Facility Ranking System.

(1) Upon a determination of insufficient PSTEAF funding to initiate corrective action at facilities, facilities shall be ranked according to the extent of damage to the environment, the potential

threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to prioritize the completion of corrective action and the subsequent reimbursement of eligible costs.

(2) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(3) Actions performed by, or on behalf of, the cabinet in accordance with KRS 224.60-135(2) shall not be subject to the ranking system.

(4) Facilities performing site checks or initial abatement, at the written direction of the cabinet in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(5) Those facilities for which the owner or operator has verified, through submittal of a notarized UST Affidavit of Waiver for PSTEAF Reimbursement, DWM 4281, that reimbursement from the PSTEAF will not be sought shall not be subject to the ranking system.

(6)(a) Facilities eligible to participate in the FRA and the PSTA shall be ranked for purposes of addressing the completion of corrective action.

1. Facilities with releases for which the cabinet has not issued a no further action letter shall be a Rank 1, if:

a. Contamination is confirmed within domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels established in 401 KAR Chapter 8; or

b. "Vapor intrusion", as defined by 401 KAR 42:005, Section 1(65), is confirmed in occupied residential or commercial buildings.

2. All other facilities with releases for which the cabinet has not issued a no further action letter shall be a Rank 2.

(b) Facilities shall be further categorized within their respective rank based on the financial ability of the owner or operator.

1. Facilities shall be placed in Category 1 within their respective rank if:

a. The owner's or operator's average total income for the last five (5) years is less than or equal to \$100,000; or

b. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

2. Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than \$100,000.

3. The cabinet shall utilize the information provided in an owner's or operator's application for assistance for PSTEAF, for purposes of determining financial ability to perform corrective action.

(c) The cabinet shall be provided access to a facility for the purpose of verifying classification. Refusal by an owner or operator to allow access requested by the cabinet shall render the facility ineligible for reimbursement from the cabinet.

(d) If the cabinet receives misrepresentations~~;~~ or otherwise inaccurate information, or receives new information related to specific facilities, it shall amend facility rankings and categories in accordance with this subsection of this section.

(e) Issuance of written directives shall be prioritized for facilities within the FRA and the PSTA, respectively, according to rank and category, in the following order:

1. Rank 1, Category 1;
2. Rank 1, Category 2;
3. Rank 2, Category 1; and
4. Rank 2, Category 2.

(f) The cabinet shall consider the current legislatively enacted budget and available funding in making the allocations established in subsection (1) of this section.

(g) The cabinet shall notify an owner or operator of the decision to suspend written directives for rankings within either the PSTA or the FRA, upon a determination of insufficient PSTEAF funding to initiate corrective action in all rankings.

Section 22. Extensions.

(1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation

or established by the cabinet in a written directive.

(2) The extension request shall be received by the UST Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would be equitable, does not impact the PSTeAF's financial viability, and would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for any requirements established in Section[Sections] 12 or 15 of this administrative regulation.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "UST Affidavit of Termination of PSTeAF Contract", DWM 4280, September 2019;

(b) "UST Affidavit of Waiver for PSTeAF Reimbursement", DWM 4281, September 2019;

(c) "UST Application for Assistance for PSTeAF", DWM 4282, September 2019;

(d) "UST Application for Laboratory Certification", DWM 4283, August 2023[September 2019];

(e) "UST Application for PSTeAF Eligible Companies or Partnerships", DWM 4284, September 2019;

(f) "UST Claim Request for Actions Not Directed", DWM 4285, September 2019;

(g) "UST Claim Request for Directed Actions", DWM 4286, September 2019;

(h) "UST Miscellaneous Tasks Reimbursement Worksheet", DWM 4287, August 2023[September 2019];

(i) "UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet", DWM 4288, August 2023[September 2019];

(j) "UST Payment Waiver", DWM 4289, September 2019;

(k) "UST Reconsideration Request", DWM 4290, September 2019;

(l) "UST Re-Evaluation of a Reimbursable Amount", DWM 4291, August 2023[September 2019];

(m) "UST Third-Party Claim", DWM 4292, September 2019; and

(n) "UST PSTeAF Reimbursement Rates", August 2023[May 2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Louanna Aldridge, Environmental Scientist Consultant, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-0863, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Insurance
Health Life and Managed Care Division
(As Amended at ARRS, December 11, 2023)**

806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.

RELATES TO: KRS 304.1-050(1) 304.9-020, 304.9-055, 304.17A-005(29), 304.17A-732

STATUTORY AUTHORITY: KRS 304.2-110~~, 304.17A-732]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-732 requires insurers to annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to

its insureds in conjunction with behavioral therapy and not in conjunction with behavioral therapy. This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-732.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by ~~by~~ⁱⁿ KRS 304.1-050(2).

(3) "Insurer" is defined by KRS 304.17A-005(29).

(4) "Medication for addiction treatment" means a prescription drug that:

(a)

1. Is prescribed for use in the treatment of alcohol or opioid addiction; and

2. Contains methadone, buprenorphine, or naltrexone; or

(b) Was approved before January 1, 2022, by the United States Food and Drug Administration for the mitigation of opioid withdrawal symptoms.

~~[(5) "Pharmacy Benefit Manager" is defined by KRS 304.9-020(15).]~~

Section 2. Data Reporting Requirements.

(1)~~[(a)]~~ An insurer authorized to write health insurance in this state shall submit the data required by the Annual Report on Providers Prescribing Medication for Addiction Treatment form~~[Pharmacy Claims Standardized Data Request]~~ to the commissioner by March 31st of each year.~~[A pharmacy benefit manager paying pharmacy claims on behalf of an insurer may submit the data required by the Pharmacy Claims Standardized Data request to the commissioner on behalf of the insurer.]~~

~~[(2)]~~^[(b)] The data required by the Annual Report on Providers Prescribing Medication for Addiction Treatment form~~[Pharmacy Claims Standardized Data Request]~~ shall be submitted via electronic mail to DOI.Healthreporting@ky.gov.~~[:]~~

~~[1. Be submitted in an electronic format prescribed by the Commissioner;~~

~~2. Contain the prescribed data elements and information in the order prescribed; and~~

~~3. Contain data for claims received in the prior calendar year for prescriptions for medication for addiction treatment.~~

~~[(2)(a)]~~ The Department shall generate and provide a Medical Claims Standardized Data Request to each insurer based on the data submitted pursuant to subsection (1) of this section.

~~(b)~~ An insurer shall submit the data required by the Medical Claims Standardized Data Request within sixty (60) days of the date it is provided to the insurer, as described in paragraph (a) of this section.

~~(c)~~ The data required by the Medical Claims Standardized Data Request shall:

~~1. Be submitted in an electronic format;~~

~~2. Contain the prescribed data elements and information in the order prescribed; and~~

~~3. Contain data for claims of identified insureds, as requested by the commissioner, that were received in the prior calendar year.]~~

Section 3. Material Incorporated by Reference.

~~(1) [The following material is incorporated by reference:]~~"Annual Report on Providers Prescribing Medication for Addiction Treatment" form, 9/2023[7/2023], is incorporated by reference.

~~[(a)]~~^[(a)] "Pharmacy Claims Standardized Data Request", 10/2021; and

~~[(b)]~~^[(b)] "Medical Claims Standardized Data Request", 10/2021.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)**

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(16) requires the commission to ~~[""]~~promulgate administrative regulations to establish standards for the conduct of sports wagering.~~[""]~~ KRS 230.361 ~~requires/states~~ the ~~[""]~~tracing commission ~~to/shall~~ promulgate administrative regulations to establish a fully functioning sports wagering system.~~[""]~~ KRS 230.811 and ~~[KRS 230.814 authorize/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(30).

(4) "Service provider license" means a license granted to a service provider that has a contract with an operator to provider 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 ~~license/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, ~~whether or not the applicant/the following factors~~:

(1) ~~Whether the applicant~~ Otherwise qualifies to receive a license under KRS Chapter 230;

(2) ~~Has/Whether the applicant's~~ key persons and substantial owners ~~who~~ 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 if the submitted information is sufficient to determine the applicant's suitability and based on the history, if any, of the applicant for a service provider license or its parent company of offering sports wagering or other gaming in other jurisdictions.

(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) ~~If/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 ~~shall/may~~ expire of its own accord, or it may be suspended, revoked, or summarily suspended, Suspension, revocation, and summary suspension shall be 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 established in paragraphs (a) through (g) of this subsection./follows:

(a) The commission may deny the application if the applicant makes a material misrepresentation or omission in its application or supporting documentation/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 established in subparagraphs 1. and 2. of this paragraph./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. An applicant/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, if/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[Application(s)] as required by 809 KAR 1:003, Section 6[(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 based on the best interests of sports wagering.

Section 8. Incorporation by Reference.

(1) "Initial/Renewal Application for Service Provider License", KHRC 01-002-001, 06/2023, 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 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>.

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.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)**

809 KAR 1:003. Occupational licenses.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: 230.260 ~~(16)~~~~(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 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 who[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 has[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 pursuant to Section 6 of this administrative regulation, 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 ~~6~~~~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, and 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: ~~[(1)]~~ 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, KAR Titles 809 and 810, 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, ~~for~~ imposition of fines by the commission, or a combination of license action and fines.

(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 established[set forth] in Section 6[5] of this administrative regulation.

Section 3. Application Fees.

(1) All required application fees established[described] under this section shall be submitted to the commission in the form of cash, 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 based on actual costs[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 and time expended for the investigation. 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 established[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 established in paragraphs (a) through (f) of this subsection.[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 Kentucky Horse Racing Commission, 4047 Iron Works Parkway,[the commission's office in] Lexington, Kentucky 40511.

(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: 4047 Iron Works Parkway,[in] Lexington, Kentucky 40511, within thirty (30) days of the change, unless it is information established in paragraph[list in] (e) of this subsection[section].

(e) Alternatively, any change in information may be reported online at KHRC.SportsWagering@ky.gov.[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 only, 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 shall[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 established[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 based on the sufficiency of the information submitted to determine the proposed transferee's suitability and the history, if any, of the proposed transferee or its parent company of offering sports wagering or other gaming in other jurisdictions.

(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 established[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 sports wagering:

- 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.

(c) An employee seeking a race and sportsbook employee license shall submit a completed Race and Sportsbook Employee Application Form, KHRC 01-003-03, to the commission's Lexington office or online at <https://khrc.ky.gov/Sportsbetting/newappwelcome>.

(2) Information services provider licenses.

(a) All business entities that provide information services to sports wagering licensees in Kentucky shall obtain an information services license, such as sports wagering:

1. ~~[(a)]~~ ~~[Sports wagering]~~ Odds makers or traders;
2. ~~[(b)]~~ ~~[Sports wagering]~~ Data source;
3. ~~[(c)]~~ ~~[Sports wagering]~~ Risk management;
4. ~~[(d)]~~ ~~[Sports wagering]~~ Player account management; and
5. ~~[(e)]~~ ~~[Sports wagering]~~ Platform providers, including geolocation technology, Know Your Customer, or Sports Wagering Equipment Manufacturer.

(b) To apply for an information services provider license, an applicant shall submit a completed Information Services License Application Form, KHRC 01-003-01, to the commission's Lexington office or online at <https://khrc.ky.gov/Sportsbetting/newappwelcome>.

(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.

(c) An applicant seeking a key employee license shall submit a completed and notarized Multi Jurisdictional Key Employee License Form, KHRC 01-003-02, along with photo identification, to the commission's Lexington office or online at <https://khrc.ky.gov/Sportsbetting/newappwelcome>.

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 (1) 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 Application Form, KHRC 01-003-04 or online at <https://khrc.ky.gov/Sportsbetting/newappwelcome>~~[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 established~~[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 in any jurisdiction;
- (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. An appeal shall be in 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 as established in subsections (2) and (3) of this section.

(2) Changes in information that are not ~~established~~detailed in subsection ~~(3)~~(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) ~~If [in cases where]~~ a licensee fails to display his or her [their] badge or license as required, the commission may impose penalties based on individual circumstances, such as the reason the person failed to display his or her badge or license and the number of prior violations. Penalties, which may include fines, suspension, ~~for~~ revocation of the license, or a combination of license action and fines.

(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~~[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 Application 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>.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)**

809 KAR 10:001. Definitions~~[General provisions]~~.

RELATES TO: KRS 138.552, Chapter 230, 31 C.F.R. 1010.100(ww)

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 ~~for~~for 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 KRS 138.552 and Chapter 230~~[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~~(1)~~(a).

(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~~(3)~~.

(7) "Applicant" means a person who~~[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 accordance with KAR TITLE 809~~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, including~~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,"~~ "and/or" electronic sporting events means leagues, competitive circuits, tournaments, or similar competitions in which/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 that/which sanctions, manages/regulates, or organizes an electronic sporting event.

(19) "Geofence" is defined by KRS 230.210(7).

(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 includes/shall include wagering rules and is/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 by/in KRS 230.210(16).

(26) "Licensed facility for sports wagering" is defined by/in KRS 230.210(15).

(27) "Licensee" means the holder of a sports wagering operator's license, ~~or 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 or/ mobile applications, or other off-site technology approved by the commission.]~~

~~[(29) [(30)] "Multi-factor authentication" means a type of authentication that/which uses two (2) or more of the following to verify a person's identity:~~

~~(a) Information known only to the person (for example e.g., a password, pattern, or answers to challenge questions);~~

~~(b) An item possessed by a person (for example e.g., an electronic token, physical token, or an identification card); or~~

~~(c) A person's biometric data (for example e.g., fingerprints, facial recognition, 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(19).]~~

~~[(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 in which/where patrons can/may make selections of outcomes on a set number of sporting events and types of wagers/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 prizeing available for an individual tournament, contest, or pool.]~~

~~[(36) [(37)] "Prohibited patron" means:~~

~~(a) Any "underage person," as defined by subsection (63) of this section;~~

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

~~(c) Any individual wagering on behalf of another;~~

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

~~(e) Any voluntarily or involuntarily excluded person; or~~

~~(f) Any individual wagering in violation of Commonwealth, local, or federal law.]~~

~~[(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(22).]~~

~~[(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 to/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 (1) other jurisdiction where patrons can/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(26).]~~

~~[(47) [(48)] "Sports governing body" is defined by KRS 230.210(27).]~~

~~[(48) [(49)] "Sports wagering" is defined by KRS 230.210(28).]~~

~~[(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(29).]~~

~~[(51) [(52)] "Sports wagering kiosk" means a sports wagering device within a licensed facility for sports wagering that, at a minimum, can/may be used for the submission of wagers placed by a patron directly and can/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(30).]~~

(53) [(54)] "Sports wagering system" means the hardware, software, firmware, communications technology, and 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 can[may] be used to fund a sports wager or can[may] be redeemable for cash.

(56) [(57)] "Sufficient clarity" means the capacity of a surveillance system to record images:

(a) At a minimum of twenty (20) frames per second or equivalent recording speed, or other recording speed approved by the commission to clearly identify the intended activity, person, object, or location; and

(b) At a resolution determined by the racing commission to clearly identify the intended activity, person, object, or location.

(57) [(58)] "Surveillance operation room[room(s)]" means the secured area[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 could[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, and 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 established[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 window[windows]" means a teller window[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>.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, December 11, 2023)

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(16) 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 allows[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 shall 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) A wager that complies with the criteria established in paragraphs (a) through (d) of this subsection and that[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 shall be[is generally] approved and shall[does] not need specific approval under Section 2 of this administrative regulation prior to being offered by a licensee. A wager under this subsection shall be based on:

(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 in the best interests of sports wagering.

(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 requirements[regulations] established in Section 2 of this administrative regulation;

(b) Any occurrence of injuries or penalties;

(c) Any officiating 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 (1) 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 established[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 shall be allowed[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 and address of each petitioner[name(s) and address(es) of petitioner(s)];

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

(c) If[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 shall include[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. Each[The] proposed location[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, if[whether] the electronic sporting event operator is approved to host events by the video game publisher, and if[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 certifying[certifies] that the electronic sporting event meets all event integrity requirements of the racing commission established in KRS Chapter 230 and KAR Titles 809 and 810;

(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 shall be able to[can] be verified;

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

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

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

(e) The sporting event shall be[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 shall[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) In the best interests of sports wagering, the racing commission may require a[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 shall reserve[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 immediately[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 (1) 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)

(a) The request shall be sent to the racing commission at least ten (10) calendar days before the particular sporting event.

(b) At any time ~~[-, however,]~~ a sports governing body shall report information to the racing commission if the information[is] 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) Pursuant to the criteria established in KRS 230.808, the racing commission shall grant, provisionally 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, incorporated by reference in KAR Title 809 or 810 KAR 3:010, the data source or sources[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 as established in subsection (2) of this section.

(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, if the[provided such] licensees make hard copies of the wagering rules readily available to individuals and patrons or display commission-approved short-form wagering[house] rules, as established in subsection (2) of this section, in race and sports book locations.

(2) The wagering rules shall comply with GLI-33 Standards and shall state/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) ~~A[No]~~ sports wagering tournament, contest, or pool shall not 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 the licensee's[its] intent to offer that tournament, contest, or pool type and obtains approval from the racing commission in the best interests of sports wagering. 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 if[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 at least 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 if[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 that[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 in[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 ~~the patron's~~~~their~~ sports wagering account. Wagers shall not be accepted in an amount in excess of a sports wagering account balance.

(6) ~~A~~~~No~~ licensee shall not 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 based on the best interests of sports wagering, 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 established in paragraphs (a) through (i) of this subsection. The licensee need not obtain prior authorization of the racing commission to cancel or void the sports wager under these~~~~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 in which~~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, with~~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 in which~~when~~ an athlete~~individual participant~~ fails to participate in a sporting event and the outcome of the wager is solely based upon that athlete's~~individual participant's~~ performance;

(d) Any sports wager received for an act, or set of acts, to be performed during a sporting event in which the act~~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 if~~whether~~ a team will qualify to participate in post-season competitions if~~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) If~~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 included~~defined~~ in the licensee's internal controls.

(h) If~~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) If~~When~~ authorized or ordered by the racing commission pursuant to this section.

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

(a) ~~The racing commission approves the material change;~~
~~(b)~~ The licensee documents the material change in its internal controls; and

~~(b)(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) of this section, 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 the~~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) If~~Whether~~ the alleged facts implicate the integrity of the sporting event subject to the wager or the sports wagering industry;

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

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

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

(5) ~~A~~~~No~~ sports wager subject to the request to cancel or void shall not 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 ~~for 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 established~~described~~ in subsection (1) of this section.

(8) A patron may request that 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 canceling or voiding of the sports wager did not conform with this administrative 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. Promotions or bonuses shall be conducted in accordance with this section. ~~;~~

(1) Procedures for the issuance, acceptance, and tracking of promotions or bonuses shall be included~~(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 (such as active, disabled, or 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) Patron notification procedure if~~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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)

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 KRS Chapter 230 and KAR Titles 809 and 810~~[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(2) and (3) and GLI-33 Standards.

(2) A sports wagering system shall meet the requirements ~~[specifications]~~ established in subsection (1) of this section and KAR Title 809~~[these regulations]~~. Failure to comply with the requirements~~[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 in the best interests of sports wagering 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 shall be~~is~~ responsible for all costs associated with testing and obtaining off~~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 shall~~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 shall~~must~~ include a list of all critical files and associated signatures and an appendix that~~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 shall~~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 the~~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~~regulatory~~ requirements in KAR Title 809, the independent testing laboratory approved by the racing commission in the best interests of sports wagering shall certify the sports wagering system. Licensees shall not offer~~are prohibited from offering~~ sports wagering in Kentucky without such~~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 if~~where~~ applicable.

(1) The servers and equipment of service providers and suppliers ~~shall/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 KAR Title 809~~[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 pursuant to subsection (1) of this section. The change management processes shall ~~include~~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 in accordance with this administrative regulation; 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 ~~is/are~~ complete.

(3) At least once annually, each product operating under the approved change management processes shall be fully certified to comply with KAR Titles 809 and 810~~[the specifications established in these regulations]~~ and other technical conditions in accordance with KRS 230.290(3)~~[specifications as prescribed by the racing commission]~~ and shall be accompanied by formal certification documentation from an independent testing laboratory. The licensee ~~may~~shall be allowed to seek approval for an extension beyond the annual approval if hardship can be demonstrated. Granting of a hardship waiver shall be at~~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 ~~if/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.

~~(2)~~~~(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.

~~(3)~~~~(4)~~ Mechanisms shall be in place to detect software, programs, virtualization, and other technology that could~~may~~ obscure or falsify the patron's physical location for the purpose of placing sports wagers.

~~(4)~~~~(5)~~ The geolocation services used by the licensee shall be certified by an authorized, independent testing laboratory approved by the commission in the best interests of sports wagering. The commission [or its designee] may conduct applicable field testing upon certification~~[the approved~~

~~independent testing laboratory, including, without limitation, applicable field testing as authorized by the commission, before its deployment]~~.

~~(5)~~~~(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 in the best interests of sports wagering and shall be accessible by the racing commission.

(2) The racing commission, based on good cause identified by the licensee, 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 in accordance with subsection (3) of this section. ~~[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 shall be/is subject to approval of the racing commission and shall be based on~~[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 established in KAR Title 809~~[outlined in the racing commission's regulations]~~, including the technical security controls established~~[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 ~~that could~~**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, ~~if applicable~~.

(5) ~~The licensee may~~**if it is acceptable to** reuse the results of prior assessments within the past year conducted by the same third-party contractor ~~if 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 ~~shall does~~ not include any critical components of a sports wagering system unique to the Commonwealth ~~that 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 ~~that state 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 ~~established 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) ~~After considering the factors established in paragraph (a)1. through 3. of this subsection and in the best interests of sports wagering~~, the commission may require suspension of operations until implementation of any critical corrective ~~actionaction(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 ~~shallshould~~ be performed from an authenticated scan perspective. External scans ~~maycan~~ be performed from an uncredentialed perspective.

(2) The quarterly scans ~~shallcan~~ 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 ~~pursuant to Section 8(3) of this section~~.

(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 ~~in accordance with Section 8(6)(a)1. through 3. of this administrative regulation and in the best interests of sports wagering~~, impose disciplinary action in the event of critical unresolved vulnerabilities or vulnerabilities that continue unabated.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)**

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(16) 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) ~~requires standards~~**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 ~~pursuant to KAR Titles 809 and 810~~. 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 ~~that which~~ indicates that they are an underage person;

and

(b) Inform the patron on the account application:

1. Which information fields are "required~~[,];~~:"

2. Which **information fields** are not **required~~[,];~~** and

3. ~~[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 **the patron is~~[they are]~~** prohibited from:

1. Transferring or selling an account or account balance;

2. Using any technology that **could~~[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; **and~~[,]~~**

(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 **established~~[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. ~~[If/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 (**for example~~[e.g.]~~**, active, dormant, closed, suspended, **and 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~~[portion(s)]~~** thereof;

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

(c) The account holder's previous and current debit instrument **number~~[number(s)]~~**, credit or debit card **number~~[number(s)]~~**, bank account **number~~[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 **the patron is~~[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~~[portion(s)]~~** thereof.

(3) The electronic verification information shall be verified by a **licensed information services provider~~[commission-approved independent reference company, or through an alternative process approved by the commission]~~**.

(4) The following data shall be verified before account holders **may~~[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~~[portion(s)]~~** thereof; **and~~[,]~~**

(b) Items that permit flexible match for common interpretations of names and abbreviations used in the address fields, **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 **may~~[can]~~** initiate any activity including deposits, withdrawals, and wagering. One (1) of the following methods, or another method approved by the racing commission **in accordance with contemporary industry standards, shall be~~[is]~~** required:

(a) Correctly answer three (3) 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 **matches~~[match]~~** the information provided by the account holder; or

(c) Valid **government-issued~~[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 **immediately~~[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. **Except as established in subsection (4) of this section,** 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 ~~if 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 shall be reviewed/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 **may[can]** participate in sports wagering;

(b) A statement that prohibited patrons **shall not participate[are prohibited from participating]** in sports wagering;

(c) Advice to the account holder to keep their authentication credentials **(for example [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 **shall have[has]** access to the sports wagering account. Allowable authentication credentials **shall be approved by the commission based on federal law, KRS Chapter 230, and KAR Titles 809 and 810[are subject to the discretion of the racing commission as necessary].** The requirement **shall[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 **that shall prompt[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 **for[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 **that[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; **and**

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 **as established in 809 KAR 10:006.**

(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) **If[Where]** financial transactions are conducted through EFT, the licensee shall have security measures and controls to prevent EFT fraud. A failed EFT attempt **shall not be[is not]** considered fraudulent if the account holder has successfully performed an EFT on a previous occasion with no outstanding chargebacks. **If an account holder has previously performed an EFT with a**

chargeback~~[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 ~~may~~shall be allowed to withdraw the funds maintained in their sports wagering account, whether the account is open or closed, except as otherwise established in KAR Title 809~~[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 shall/must] honor the account holder's request within fourteen (14) days after the request, unless the conditions established [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 KRS Chapter 230 or KAR Title 809, in which case~~[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 an/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 shall be/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 at least monthly 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 state/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 state/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 ~~(for example~~[e.g., next login or] 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 included/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 the Web[such] site; and

(e) How the licensee addresses bonuses or promotions and account balances during and after the break, and if/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) if/when the account holder requests a break from wagering under Section 9(1) of this administrative regulation~~[subsection (1) of this section]~~;

(b) if/when required by the racing commission in the best interests of sports wagering;

(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) if/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) if/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~~[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 Section 9(1) of this administrative regulation~~[subsection (1) of this section]~~;

(b) If authorized by the racing commission in the best interests of sports wagering;

(c) ~~if [When]~~ the account holder is no longer a prohibited patron; or

(d) ~~if [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, ~~if [provided that]~~ the licensee acknowledges that the funds have cleared, and ~~if [that]~~ the reason/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, ~~if [provided that]~~ the licensee acknowledges that the funds have cleared and there is not a pending [no] racing commission investigation regarding the funds ~~[is pending]~~.

Section 12. Dormant Accounts. Any sports wagering account without [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 may [can] request these funds. Methods [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 the licensee's 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.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, December 11, 2023)

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(16)(a) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361(2) states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.805 authorizes [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 based on the proximity to the cage or wagering window and the accessibility to mitigate risk while performing a cash drop;

5. Any race and sports book location that is, or is from time to time, a restricted race and sports book location, stating [specifying] the nature of the restrictions and the conditions under which [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; and [.]

[(b)] [(e)] A Certificate of Occupancy issued by the authority having jurisdiction [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.

[(c)] In considering a request related to a floor plan, the commission shall consider at least [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 based on, at a minimum, the

conditions established in Sections 1(2)(c) and 9 of this administrative regulation.

(4) A floor plan may be amended upon request by the licensed premises and approval by the racing commission. ~~The[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[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 **approved by the racing commission in the best interests of horse racing, pari-mutuel wagering, and sports wagering[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 **allowed[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 **shall** 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 **patron's[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 (1) of the following valid identification credentials collected from the patron to verify **the patron's[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 **at least** five (5) years that include **the:**

- (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[employee(s)]** accepting or approving the wager and payout on the wager.

(3) Licensees shall monitor all wagers and payouts to ensure patrons **shall not circumvent[are not circumventing]** the recording and reporting requirements of this section.

Section 4.[Section 5.] Wagering Windows.

(1) Each licensed premises may have one (1) or more wagering windows located in the race and sports book location or other window locations as approved by the racing commission, **which shall consider at least the criteria established in subsections (2) through (4) of this section.**

(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[room(s)]**; and

4. Contain full enclosures, unless funds are either secured in a drop safe approved by the racing commission, **in the best interests of sports wagering**, 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 **stated[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 **stated[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 **allow[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 **not** be added to or removed from the wagering inventory during **the[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, **if[where]** supported;

(g) In exchanges with the cashier's cage, a satellite cage, or vault supported by proper documentation **that[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 **secure location not accessible to the public[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 secure location not accessible to the public~~[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, the[such] discrepancy shall be reported to surveillance personnel and the wagering manager or supervisor in charge at the[such] time. Any discrepancy in excess of \$500 shall be reported to the racing commission. The[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 based on, at a minimum, proximity to the cage or wagering window and accessibility to mitigate risks while performing a cash drop. 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 an[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 commission's approval shall be based on the best interests of sports wagering. In the best interests of sports wagering, 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 shall[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 shall[must] include a list of all critical files and associated signatures and an appendix that[which] lists the differences of any controlled items or processes required to be certified in Kentucky that[which] were not certified in the jurisdiction in which the report was issued. Upon review of the certification report, the racing commission shall[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 documented in the internal controls~~[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; ~~and~~.]

(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, and 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 (2) employees shall be involved in the collection of currency cassettes and drop boxes from kiosks, and at least one (1) employee shall~~[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 shall 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 shall be~~are~~ permanent and identifiable, and that the original, corrected information shall remain~~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 shall be~~is~~ located in or within close proximity to the race and sports book location. Each licensed premises may also have one (1) 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) Be for performing~~[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 (1) 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 rooms~~[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 have~~be subject to~~ continuous surveillance coverage.

(3) Each licensed premises may have one (1) or more service windows to serve as a location in the facility to conduct financial transactions. Each~~[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 so[such] that a[no] single person shall not have[has] both control and approval for any aspect of cage operations maintained.

(7) A qualified supervisor may perform the functions of a cashier iff[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 allow[permit] any other person to access his or her imprest inventory. Cashier functions shall include [the following]:

(a) Performing[Perform] check consolidations, total or partial redemptions, or substitutions for patrons;

(b) Receiving[Receive] cash, authorized cash equivalents, and authorized electronic transfers from patrons in exchange for currency or sports wagering vouchers;

(c) Performing[Perform] deposit and withdrawal transactions for sports wagering accounts, iff[where] supported;

(d) Processing[Process] exchanges with cashiers, supported by documentation with signatures thereon, for the effective segregation of functions in the cashiers' cage;

(e) Receiving[Receive] sports wagering tickets or vouchers from patrons or authorized employees in exchange for cash; and

(f) Exchanging and reconciling[Exchange and reconcile] imprest funds used by attendants, including imprest change or pouch[change/pouch] payout funds.

(9) A licensed premises may consolidate the cashier functions, iff[provided that] the cashier is qualified to perform all functions and does not perform[performs no] functions incompatible with proper separation of duties.

Section 10. [Section 11.] 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[room(s)] or [, when authorized by the racing commission,] a secured location, such as a locked cabinet.

(a) The surveillance operation room[room(s)] shall be secured to prevent unauthorized entry.

(b) The location of the surveillance operation room or rooms shall ensure the interior shall not be[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[room(s)] shall be limited to surveillance personnel, the racing commission, and other persons authorized by the licensee.

(d) Surveillance operation room[room(s)] access logs shall be maintained, recording all entries and exits.

(e) [No.] Personal recording devices of any kind shall not be allowed[are permitted] in the surveillance operation room, including[. 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 by the licensee at least quarterly. If[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 immediately 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 (2) 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:
a. [Requiring that] Employees entering the licensed facility for sports wagering shall be identifiable; and

b. Cameras shall be 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 shall be[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 at least 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 shall 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 can/may be stored or counted; and

2. Provide coverage of count equipment with sufficient clarity to view any attempted manipulation of the recorded data;~~and[-]~~

(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 established/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 KRS Chapter 230[the Act] or KAR Title 809 shall be identified as a violation[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 of the incident;

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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)

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 establishes/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 in accordance with GLI-33 Standards and subsection (3) of this section. 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 consistent with commission staff audits in accordance with GLI-33 Standards. 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, which shall be implemented as submitted, in which case[with] the racing commission shall retain[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, consistent with commission staff audits in accordance with GLI-33 Standards. 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 based on immediate risk or immediate implied risk to sports wagering.

(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 the amendment shall not[fit-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 administrative regulation;

(c) Access controls, which shall include[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 that allows[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 that allow[which permit] the authorization or supervision of necessary transactions at all relevant times; and

4. Areas of responsibility that[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 established[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 809 KAR Chapter 10[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 is[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 based on GLI-33 Standards.

(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. Commission approval shall be based on commission staff audits and compliance with GLI-33 Standards.

Section 2. Information Security Responsibilities. The internal controls shall ensure that an information security program shall be[is] effectively implemented~~[,]~~ and information security function responsibilities shall be[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 shall be[is] responsible for developing a security strategy in accordance with the overall operation. The information security department shall[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 at least 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 at least 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 stating/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 shall be/is December 31 of each year, unless otherwise approved by the racing commission for good cause shown by the licensee.

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 established in subsections (1) through (7) of this section, 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 established/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 established/specified retention period. This prohibition shall be based on factors such as an ongoing investigation or the licensee's history of unusual wagering activity. An/Such original record may thereafter be destroyed only upon notice from the racing commission, ~~for~~ 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 with undetermined outcomes/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 based on the risk assessed from audits performed by commission staff, a licensee shall file a monthly attestation with the racing commission, which shall state/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 ~~twenty-four (24) hour~~**[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 ~~established~~**[set]** by the IRS. ~~Disclosure shall~~**[Such disclosures will]** include a statement that the obligation to pay applicable taxes on payouts ~~shall be~~**[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 ~~shall require~~**[requires]** reporting under the terms of this section if ~~the transaction~~**[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 ~~and~~:

(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 (~~such as~~**[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 ~~KAR Title 809~~**[these regulations or of any other regulations promulgated under the Bank Secrecy Act]**;

(c) ~~Does not have~~**[Has no]** business or ~~an~~ apparent lawful purpose or is not the sort in which the particular patron would normally be expected to engage, and the licensee ~~is not aware of~~**[a]**~~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 ~~the licensee~~**[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 ~~might~~**[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 ~~at least~~ 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 ~~KAR Title 809~~**[this Chapter]**, other law, or court order, ~~a~~ licensee and its directors, officers, employees, or agents who file a report pursuant to this ~~administrative~~ regulation shall not notify any person involved in the transaction that the transaction has been reported. Any report filed with the racing commission ~~shall be~~**[is]** confidential and may be disclosed by the racing commission in the necessary administration of their duties and responsibilities under ~~KRS Chapter 230~~**[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~~**[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 ~~at least~~ 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 ~~established~~**[described]** in subsection (1)(d) ~~of this section~~, unless disclosure is required by ~~KRS Chapter 230~~**[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 ~~may~~**[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 as established in paragraphs (a) through (d) of this subsection, 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 in the best interests of sports wagering, 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 established[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) An[No] employee or agent of the licensee shall not 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 (1) 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 can[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) If[When] a patron makes a complaint, the licensee shall, within twenty-four (24) hours,[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 if[where], although funds have been deposited into a sports wagering account, the licensee is awaiting actual receipt of the[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 Web site[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 daily[promptly].

Section 17. Reports of Licensees. The internal controls shall include[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 shall be[are] prepared in accordance with the technical conditions prescribed by the commission pursuant to KRS 230.290[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 shall be[is] confidential and proprietary and shall be[is] exempt from disclosure unless disclosure is required by 809 KAR Chapter 10[this Chapter], by other law, or by court order.

Section 18. Racing Commission Access to Sports Wagering Data. The internal controls shall establish measures to ensure that all sports wagering data shall be maintained in compliance with KRS Chapter 230 and KAR Title 809. The internal controls shall also establish measures to ensure that all sports wagering data shall be 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 applicable[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 shall include[includes] internal controls conducted by an affiliate on behalf of the licensee. Reports shall be maintained and available to the racing commission for at least five (5) years.

(1) [Such] Independent audits may be conducted by the racing commission in accordance with KAR Titles 809 and 810 and GLI-33 Standards, or a third-party contractor approved by the racing commission in the best interests of sports wagering. 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 KRS Chapter 230[the Act] and KAR Title 809, the Wagering Procedures and Practices established[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) The licensee may[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. A[Such] reuse shall be noted in the audit report. This reuse option shall[does] not include any internal controls unique to the Commonwealth, which shall require a new audit[will require new audits].

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)

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[self-identify] as problem or compulsive gamblers.

(2) The commission shall consider at least the [following] factors established in paragraphs (a) through (d) of this subsection 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 established[prescribed] by the racing commission in accordance with KRS 230.290.

(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] through the online portal[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 through[to] 61.884.

(11) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce KAR Titles 809 and 810[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:

(a) Compliance with KAR Titles 809 and 810[tracing commission regulations] and

(b) The policy's[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 ~~shall be~~ honored by the licensee.

(2) In approving the organizations and disclosures ~~established in~~ subsection (1) of this section, 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 shall be~~ independently reviewed by a third party ~~in accordance with industry standards~~ and performed by a third party approved by the racing commission ~~based on experience with auditing industry standards, and responsible gaming~~. The racing commission ~~shall~~ 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 ~~could~~ be incidentally received by) elementary, middle, or high schools.

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PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, December 11, 2023)

809 KAR 10:008. Disciplinary actions and hearings.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(16), 230.361, ~~Chapter 13B~~

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 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system..." This administrative regulation establishes procedures and ~~articulate~~ grounds for disciplinary actions, imposing sanctions, investigating suspected violations, providing notice of disciplinary actions, and requesting and conducting an administrative hearing.

Section 1. Grounds for Disciplinary Actions.

(1) The racing commission may take disciplinary action against any person holding a license for a violation of any of the provisions of KRS Chapter 230 ~~or~~ **KAR Titles 809 and 810** ~~any of the regulations promulgated thereunder~~, by the licensee or its employees or agents.

(2) Acceptance or renewal of a license by a licensee ~~shall constitute~~ **constitutes** an agreement on the part of the licensee to **comply with KRS Chapter 230 and KAR Titles 809 and 810** ~~be bound by all the racing commission statutes and regulations~~.

Section 2. Violations.

(1) It shall be a violation of this administrative regulation if an applicant or licensee:

(a) Provides the racing commission, any advisory committee, or any racing commission employee with incorrect, false, or misleading information;

(b) Fails to ~~submit~~ **furnish** information requested by the racing commission, any advisory committee, or any racing commission employee **pursuant to KRS Chapter 230 or KAR Titles 809 or 810**;

(c) Is charged or convicted of a crime:

1. Involving moral turpitude;

2. That constitutes a felony;

3. Involving sports wagering;

4. Off cruelty, mistreatment, abuse, or neglect of a horse; **or**

5. That, or if the crime discredits or tends to discredit the Commonwealth of Kentucky, sports wagering, or the gaming industry;

(d) Engages in conduct that is against the best interests of horse racing, pari-mutuel wagering, or sports wagering; or

(e) Violates any provision of KRS Chapter 230 **or KAR Titles 809 or 810, KAR Title 810, or KAR Title 809**.

(2) For any violation established in subsection (1) of this section, the racing commission may:

(a) Deny a license application;

(b) Suspend or revoke a license;

(c) Issue a fine or monetary penalty **pursuant to 810 KAR 8:030, Section 10(1)(d)**;

(d) Issue licensure conditions, such as restitution of money, restitution of property, or making periodic reports to the racing commission or designee as required; or

(e) Issue a written reprimand or admonishment.

Section 3. Disciplinary Process Investigations.

(1) The racing commission shall investigate suspected violations of KRS Chapter 230 and KAR Titles 809 and 810 of the Kentucky Administrative Regulations.

(2) Upon the completion of the investigation, the person or persons completing the investigation shall submit a written report to the commission containing a statement of facts revealed by the investigation.

(3) Based on consideration of the investigative report, the commission shall determine ~~if whether~~ there is probable cause to believe that a violation has been committed.

Section 4. Notice of Disciplinary Action and Appeals.

(1) Upon determination that probable cause exists, the commission shall issue written notice of disciplinary action. The notice shall establish:

(a) The statutory or regulatory violation;

(b) The factual basis on which the disciplinary action is based;

(c) The penalty ~~imposed~~; and

(d) A statement that the notice may be appealed **and that an appeal shall be** in accordance with KRS Chapter 13B by written notice sent to the racing commission within twenty (20) calendar days.

(2) Notice of a disciplinary action under this section may be appealed to an administrative hearing.

(3) A written request for an administrative hearing shall be filed with the racing commission within twenty (20) calendar days of the date of the notice. The request shall identify the specific issues in dispute and the legal basis on which the racing commission's or

designee's decision on each issue is believed to be erroneous.

(4) An administrative hearing under this section shall be conducted in accordance with KRS Chapter 13B.

(5) If the request for an administrative hearing is not timely filed as established in subsection (3) of this section, the penalty stated[laid-out] in the notice of disciplinary action shall be effective upon the expiration of the time to request an administrative hearing.

(6) Denial of an application for licensure may also be appealed. An appeal shall be in accordance with KRS Chapter 13B, by submitting a written request for an administrative hearing to the racing commission within twenty (20) calendar days of the date of the notice of denial.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, December 11, 2023)

810 KAR 2:100. Self-exclusion.

RELATES TO: KRS ~~[230.260(15)]~~, 61.870-61.884, 230.260(15)

STATUTORY AUTHORITY: KRS 230.260(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires[authorizes] the Horse Racing Commission to promulgate administrative regulations prescribing conditions for a self-exclusion list for people who identify as problem or compulsive gamblers. This administrative regulation establishes provisions for a horse-racing-related self-exclusion list for people who identify as problem or compulsive gamblers/statute also requires the Commission to promulgate regulations prescribing conditions for notifications of the availability of this list by racing associations].

Section 1. Self-exclusion List.

(1) The racing commission shall establish and maintain a self-exclusion list for individuals who wish to be temporarily or permanently excluded from gambling in the Commonwealth for any reason, such as self-identification[self-identify] as problem or compulsive gamblers.

(2) The list shall include the names and other identifying information of the individuals who have self-excluded from gambling at racing tracks, as established[set forth] in Section 3(1) of this administrative regulation.

Section 2. Notice to the Public.

(1) Each racing association shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self identify[self-identify] at the track, online, or by phone.

(2) The notice shall be displayed at public entrances to the wagering-specific locations of the racing track and on the racing association's Web site.

(3) The notice shall include information about the consequences of self-exclusion, including that the individual will be prohibited from entering the racing track and participating in any gambling activity at the track.

(4) The notice and its placement locations shall be approved by the commission, based on the notice's content, visibility, and readability.

Section 3. Collection of Self-exclusion Information.

(1) Each racing association shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

(2) The self-exclusion information collected shall include the individual's name, address, date of birth, and other identifying information requested[as prescribed] by the racing commission.

(3) The racing association shall provide the self-exclusion

information to the racing commission on an as-needed basis, but at least weekly[a weekly basis] and in a manner approved by the commission, based on the information's completeness and ability to facilitate the commission's compilation and dissemination of information for all associations.

Section 4. Compilation of Comprehensive List.

(1) The racing commission shall compile and maintain a comprehensive list of all individuals who have self-excluded from gambling at racing tracks.

(2) The comprehensive list shall include the self-exclusion information provided by each racing association.

(3) The comprehensive list shall be provided to all racing associations and updated on an as-needed basis, but at least monthly.

Section 5. Confidentiality of Self-exclusion Information.

(1) Pursuant to KRS 61.878(1)(a) and 230.260, information collected under this subsection shall be excluded from the application of KRS 61.870 through[to] 61.884.

(2) Self-exclusion information shall be kept confidential and shall not be disclosed except as necessary to enforce KAR Title 810[these regulations] or as required by law.

Section 6. Self-exclusion Policy.

(1) Each racing association may establish its own self-exclusion policy. Each policy shall be approved by the racing commission to ensure the best interests of horse racing and compliance with KRS 230.260.

(2) The policy may cover how the racing association chooses to exclude individuals on the exclusion list. The policy may include identification and verification, forfeiture of prizes by excluded persons, security personnel, technology, employee training, contractual obligations, or collaboration with other racing associations.

(3) Each racing association shall review its self-exclusion policy at least once every two (2) years and amend it as necessary to ensure compliance with KAR Title 810[commission regulations] and its effectiveness in achieving the purposes for which it is established.

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PUBLIC PROTECTION CABINET
Kentucky Home Racing Commission
(As Amended at ARRS, December 11, 2023)

810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320, 230.811, 230.817, 15 U.S.C. 77a, 78a

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9), 230.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes[vests] the Kentucky Horse Racing Commission [with the authority] to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280(1) requires[prohibits] any person [from] conducting a horse race meeting for any stake, purse, or reward within the Commonwealth to obtain[without securing] the required license from the commission. KRS 230.260(9) authorizes the commission to promulgate[prescribe] by administrative regulation, application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. KRS 230.811 requires all applicants for a sports wagering operator's license to apply to the commission. KRS 230.260(16) requires the commission to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation

establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth~~[,] and false establishes licensing application procedures and requirements for a licensed racing association to obtain a sports wagering operator's license and offer sports wagering in the Commonwealth.~~

Section 1. Definitions.

(1) "Application" means Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form,~~["]~~ KHRC 3-010-1~~[, incorporated by reference in Section 2 of this administrative regulation].~~

(2) "Applicant for operator license" means a person licensed as an association under KRS 230.300 ~~who[that]~~ is eligible for an operator license pursuant to KRS 230.811.

(3) "Operator" means a sports wagering operator license applicant that has been granted a license.

(4) "Operator license" means a license to conduct, manage, or offer to conduct sports wagering within the Commonwealth of Kentucky, pursuant to KRS 230.811.

(5) "Occupational licensee" means a person holding a license authorized by KRS 230.210 and 809 KAR 1:003.

(6) "Principal" is defined by KRS 230.210~~(20)~~~~(14)~~.

(7)~~(2)~~ "Publicly traded corporation" means a corporation that:

(a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;

(b) Issues securities subject to Section 15(d) of the 1934 Act;

(c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, ~~15~~~~[48]~~ U.S.C. 77a et seq.; or

(d) Is required to file under the 1934 Act.

(8) "Service provider" is defined by KRS 230.210~~(30)~~.

(9) "Sports wagering" is defined as established in KRS 230.210~~(28)~~.

(10) "Substantial owner" is any person who owns five (5) percent or more of the business.

Section 2. Racing License Applications.

(1) New racing license applications. A person or legal entity desiring to conduct horse~~[thoroughbred]~~ racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).

(2) Renewal racing applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300(1).

(3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form ~~["]~~Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-mutuel Wagering, and Sports~~[and Pari-mutuel] Wagering,~~ ~~["]~~ KHRC 3-010-1.

(4) An applicant that is unable to provide information required on the application shall fully explain and document to the satisfaction of the commission its inability to provide the information at the time of filing the application, and shall provide the information ~~[promptly]~~ upon being able to do so.

Section 3. Racing License and Investigation Fees.

(1) Racing license~~[License]~~ fee.

(a) An ~~[initial]~~ applicant for an initial license shall submit with the application a non-refundable application~~[initial license]~~ fee of \$5,000.

(b) A renewal applicant shall not be charged a fee to renew a racing association license, unless an investigation fee is authorized by subsection (2) of this section.

(2) Racing license investigation~~[Investigation]~~ fees.

(a) With the application, initial applicants shall submit ~~[with the application]~~ an investigation fee of \$10,000.

(b)

1. The commission may require a renewal applicant or an applicant proposing a substantial change in ownership to pay an investigation fee of \$10,000 if:

a. The applicant or one (1) of its principals has not previously been subject to an investigation;

b. More than five (5) years has passed since the last

investigation of the applicant or one (1) of its principals was conducted; or

c. The commission finds other good cause for an investigation.

2. If an investigation fee is requested, the applicant shall submit a cashier's check or certified check payable to the commission within ten (10) days of receipt of the request.

(c) The investigation fee shall pay all costs incurred by the commission in reviewing the application.

(d) Any portion of the investigation fee not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.

(e) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

Section 4. Racing Licensing Criteria.

(1) The commission shall issue a racing license if it determines that:

(a) The applicant meets all requirements of KRS Chapter 230 and KAR Title 810;

(b) The applicant is qualified and financially capable of operating a race track;

(c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;

(d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and

(e) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available and~~[which it deems]~~ relevant to its determination of if~~[whether]~~ the applicant is qualified to hold a license, including:

(a) The integrity of the applicant and its principals, including if the applicant and its principals:

1. Are~~[Whether the applicant or its principals is]~~ unsuitable pursuant to KRS 230.280(2)(f);

2. Have~~[Whether the applicant or its principals has]~~ been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Have~~[Whether the applicant or its principals has]~~ been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Have~~[Whether the applicant or its principals has]~~ failed to satisfy judgments, orders, or decrees; and

5. Have~~[Whether the applicant or its principals has]~~ been delinquent in filing tax reports or remitting taxes;

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing that~~[which]~~ the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals;

(h) Compliance of the applicant with applicable statutes and regulations, charters, or ordinances in all relevant jurisdictions, charters, or ordinances~~[, or regulations]~~;

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky;

(j) The impact of the facility upon the Commonwealth of Kentucky in~~[the following areas]~~:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;

2. Ecological and environmental impact;
3. Social impact; and
4. Cost of public improvements;
- (k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and
- (l) The effects of the location of the track, including the following:
 1. Number, nature, and relative location of other licensees; and
 2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks, including:

- (1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;
- (2) The effects that various types of pari-mutuel racing have upon one another;
- (3) The quality of horse racing provided at other racetracks;
- (4) Dates traditionally awarded racetracks in the past;
- (5) The past performance of the licensee;
- (6) ~~If [Whether]~~ the licensee has complied with KRS Chapter 230 and KAR Title 810;
- (7) ~~If [Whether]~~ the assignment of racing dates will maximize revenues to the state;
- (8) ~~If [Whether]~~ the assignment of racing dates will adversely affect the public health, welfare, and safety;
- (9) The projected stability of the racing dates to be awarded; and
- (10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. Racing License Applicant Presentation.

- (1) An applicant that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.
- (2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether or not to issue a license, including:

- (1) Copies of any documents used by the applicant in preparing the application; and
- (2) Contracts between the applicant and third parties related to operations.

Section 8. Change in Ownership.

- (1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form, KHRC 3-010-2.
- (2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.
- (3) Notice of a change of ownership shall not be required for:
 - (a) A nominal change in ownership if the licensee is a publicly traded corporation;
 - (b) The transfer of an ownership interest in an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who will hold the voting securities of the publicly traded corporation for investment purposes only; or
 - (c) A debt transaction of a publicly traded corporation, unless the transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.
- (4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.

(a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.

(b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 9. Material Modification of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Racing Licensee Late Fee.

- (1) ~~Failure of~~ a licensee ~~[that fails to]~~ to conduct racing after the commencement date stated [specified] in the license shall be grounds for [may be subject to] a late fee not to exceed \$15,000 per day.
- (2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.
- (3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:
 - (a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or
 - (b) The default of a contractor or subcontractor, if:
 1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and
 2. The supplies or services to be provided [furnished] by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Sports Wagering Operator License Applications; Deadlines; Provision for 2023.

- (1) A racing association shall not [No racing associations shall] offer sports wagering without a valid license issued by the commission.
- (2) Initial applications. An applicant for an operator license in the Commonwealth shall apply to the commission for an operator license pursuant to KRS 230.811.
- (3) Renewal applications. An operator license shall be renewed annually in accordance with KRS 230.811.
- (4) Except as ~~established [otherwise provided]~~ in Section 14 of this administrative regulation, an initial or renewal application for an operator license shall be submitted on the form, Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, ["] KHRC 3-010-11, 06/2023[.]
- (5) Initial operator licenses granted [applications completed] for sports wagering conducted in 2023 shall be effective through December 31, 2023.
- (6) For sports wagering conducted in 2024 and thereafter, an application shall be filed with the commission prior to September 1 of the preceding calendar year.
- (7) For sports wagering conducted in 2023, operators that offer sports wagering in a licensed facility for sports wagering shall offer in-person sports wagering at their licensed facility for sports wagering starting on or after September 7, 2023. Operators shall not offer sports wagering via a Web site or mobile application before September 28, 2023.

Section 12. Operator License Fees.

- (1) An applicant for an operator license shall submit the initial fee of \$500,000 with its initial application for a license. The initial fee shall be non-refundable.
- (2) An operator shall submit the renewal fee of \$50,000 with a renewal application for their license. The renewal fee shall be non-refundable.
- (3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

Section 13. Operator Licensing Criteria.

- (1) The commission shall issue an operator license if it

determines that the applicant for an operator's participation as a sports wagering operator is in the best interests of sports wagering in Kentucky.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it deems relevant to its determination of whether **or not** the applicant for an operator license is qualified to be an operator. The commission shall consider, at a minimum, **if/whether**.

(a) The applicant for an operator license has completed and filed an Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRC 3-010-1;

(b) The applicant for an operator license meets all applicable requirements of KRS Chapter 230, KAR Title 810, and KAR Title 809;

(c) The applicant for an operator license is qualified and financially capable of conducting sports wagering;

(d) The applicant for an operator license will conduct sports wagering in accordance with KRS Chapter 230, KAR Title 810, **;** and KAR Title 809;

(e) The applicant for an operator license will conduct sports wagering in a controlled environment that protects patrons from cheating and fraud; and

(f) The issuance of an operator license will ensure the protection of the public interest.

1. The commission may authorize a temporary sports wagering operator license while determining suitability for the annual operator license.

2. The commission shall consider at least the following factors in determining whether **or not** to issue a temporary operator license:

a. ~~(g)~~ The information submitted by the applicant is sufficient to determine the applicant's suitability;

b. ~~(h)~~ The applicant for an operator's history of offering pari-mutuel wagering in the Commonwealth; and

c. ~~(i)~~ The history, if any, of the applicant for an operator license or its parent company of offering sports wagering or other gaming in other jurisdictions.

Section 14. Operator Application Procedures.

(1) An applicant for an operator license shall submit a fully executed original application.

(2) An application **shall be/is** deemed filed **once/when** the commission has received the completed application forms, including the information and documentation required by the application, unless a waiver is granted pursuant to subsection (10) of this section.

(3) The completed applications shall be filed as **established in paragraphs (a) through (c) of this subsection. ~~follows:~~**

(a) Applicants for an operator license shall submit six (6) copies or electronically **through the portal maintained ~~in a method approved~~** by the commission **at <https://khrc.ky.gov/Sportsbetting/newappwelcome>**.

(b) Applicants for an operator license shall submit the application to the commission's office in Lexington, Kentucky.

(c) Applicants for an operator license shall submit the application prior to expiration of the deadlines established in Section 11 of this administrative regulation.

(4) An applicant for an operator license **shall be/is** under a continuing duty to disclose any changes in the information submitted to the commission.

(5) Any operator that enters into a contract with a **~~new~~** service provider to provide services in Kentucky shall provide notice to the commission and a copy of **the/such** contract within fourteen (14) calendar days. If an operator has entered into a contract with a service provider to provide services in Kentucky **~~prior to the effective date of this regulation~~**, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(6) Any operator that enters into a contract with a **~~new~~** information services provider to provide services in Kentucky shall provide notice to the commission within fourteen (14) calendar days

of entry into the contract and, as requested by the commission, a copy of **the/such** contract. If an operator has entered into a contract with an information services provider to provide services in Kentucky **~~prior to the effective date of this administrative regulation~~**, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the commission within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.

(7) If an occupational licensee ceases to offer goods and services to an operator licensee, then the operator licensee shall notify the commission.

(8) An application shall include at least **~~the following information~~**:

(a) The name, address, and business structure of the applicant for an operator license;

(b) A **Multi Jurisdictional Key Employee License Form, incorporated by reference in 809 KAR 1:003, ~~application~~** for a substantial owner or key person;

(c) A description of all sports wagering services, equipment, devices, and supplies used by the applicant for an operator;

(d) Contracts with service providers or occupational licensees, which are related to the sports wagering;

(e) Disclosure of any criminal, civil, or administrative action brought against the applicant for an operator license;

(f) Description of all other licenses held by the applicant for an operator license;

(g) Internal controls related to the conduct of sports wagering;

(h) The applicant for an operator's license shall submit audited financial statements for each of the three (3) fiscal years immediately preceding the application.

(i) If the applicant for an operator's license **does not have/has no** audited financial statements, the applicant shall provide audited financial statements of its parent company and the applicant's unaudited financial statements, which document the applicant's financial performance, assets, and liabilities, including:

1. A balance sheet;

2. An income statement;

3. A cash flow statement;

4. A statement of retained earnings; and

5. Notes for financial statements.

(j) Organizational and ownership charts of the applicant for an operator license; and

(k) Information regarding all testing, certifications, or approvals on any component used by the applicant for an operator license to provide sports wagering services.

(9)(a) For applicants for an operator license in 2024 and subsequent years, internal controls shall be produced to the commission simultaneously with licensure applications.

(b) For 2023 applicants for an operator license, internal controls shall be produced to the commission thirty (30) days before the applicant for an operator license intends to begin accepting sports wagers.

(c) **~~No~~** Sports wagers shall **not** be offered by an applicant for an operator license until the commission has approved its internal controls or otherwise issued a temporary license pursuant to Section 13 of this administrative regulation.

(10)(a) Submission of the application fee and pages 23 through 31 of Form KHRC 3-010-1 on or before August 1, 2023, **shall constitute ~~constitutes~~** an application to provide sports wagering in 2023.

(b) Starting in 2023, submission of the application fee and the entire Form KHRC 3-010-1 on or before **October ~~September~~** 1 **shall constitute ~~constitutes~~** an application to provide live horse racing, simulcasting, pari-mutuel wagering, and sports wagering in the subsequent year.

(11) The commission may grant an applicant for an operator license a waiver to submit all or part of the required information if it deems that the applicant for an operator license has already submitted the information as a part of the application required under this administrative regulation. An applicant for an operator license shall request this waiver in advance of submitting an application under this chapter and provide written justification for each waiver sought. **~~This justification shall be drafted to the commission's~~**

satisfaction.]

Section 15. Operator License Requirements.

(1) A license issued under this chapter shall include, at a minimum:

(a) The applicant for an operator's license name and business address;

(b) License number assigned by the commission;

(c) Signature of the executive director, the chairman of the commission, or their designee;

(d) Date the license was issued;

(e) The date that the license will expire; and

(f) A reference to the conditions placed on the license.

(2) The operator license shall remain the property of the commission at all times and the commission may:

(a) Take licensure action. **Licensure action shall be as established/as set forth** in 810 KAR 10:008; and

(b) Issue conditions **for the license/thereon**.

Section 16. Applicant for an Operator License Presentation.

(1) An applicant for an operator license that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant for an operator's suitability. The admission of supplemental information shall be subject to the discretion of the commission, in the best interests of sports wagering in the Commonwealth.

Section 17. Joint Ventures. Two (2) or more associations licensed under KRS 230.805 may conduct sports wagering together as part of a joint venture or pursuant to an agreement between them. **A/Such** joint venture **agreement or contract/agreements or contracts** shall be submitted to the commission within five (5) days of the effective date.

Section 18. ~~Section 14.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, ~~and~~ Pari-mutuel Wagering, and Sports Wagering Form", KHRC 3-010-1, **11/2023/06/2023**~~[11/2018]~~; and

(b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2, 11/2018.

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

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended at ARRS, December 11, 2023)

902 KAR 4:120. Health Access Nurturing Development Services (HANDS) Program.

RELATES TO: KRS 13B.080-13B.160, ~~[200.700, 211.090,]~~211.180, 211.689

STATUTORY AUTHORITY: KRS 194A.050(1), 211.690

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the

cabinet. KRS 211.690 authorizes the Cabinet for Health and Family Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period until the child's third birthday. This administrative regulation establishes the eligibility criteria, services, provider qualifications, and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

Section 1. Definitions.

(1) "Department" means the Department for Public Health or its designated representative.

(2) "Family support worker" [or "FSW"] means an employee or subcontractor of the local implementing agency~~[a provider's employee or subcontractor]~~ who visits participants and performs services.

(3) "Local implementing agency" means a local health department or a ~~contracted~~/an agency that agrees to participate as a HANDS provider and to~~to~~ employ or contract with staff that:

(a) meet the qualifications **specified in Section 3 of this administrative regulation/and training requirements for home visitation service delivery; and**

(b) **Agree to abide by all:**

1. HANDS policies and procedures; and

2. Reporting requirements]""HANDS" means Health Access

Nurturing Development Services, a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday as funding is available].

(4) "Participant" means the parent and child~~[an individual]~~ enrolled in the HANDS program and receiving HANDS services.

(5) "Tele-service" means a home visitation service provided through video communication with the HANDS provider, parent, and child present in real time["Provider" means a local health department agency subscribing to staff and training requirements, program policies and procedures, and reporting requirements of the HANDS Program and agreeing to participate as a HANDS provider].

Section 2. Eligibility Criteria.

(1) In order to receive a service established in Section 4 of this administrative regulation, an individual shall be:

~~(a) [Submit ACH-301, Consent for Services, to the local health department or their subcontractor, in accordance with KRS 211.690(4).]~~

~~[(b)] [Be:]~~

~~[1-] A pregnant individual who is under twenty (20) years old[woman who has not reached her 20th birthday];~~

~~[(b)] [2-] A pregnant individual[woman] who is at least twenty (20) years old and upon assessment is identified as having **one or more risk factors**[a risk is deemed likely] for the pregnancy or the infant;~~

~~[(c)] [3-] The child of an individual identified in paragraph (a) or (b) of this subsection who is less than three (3) years of age and assessed[Up to the third birthday, an infant or toddler of an individual identified in subparagraph 1. or 2. of this subsection, whose family is determined to be at risk and is screened] for eligibility within ninety (90) days post-birth; or~~

~~[(d)] [4-] A father or guardian of a child identified in paragraph (c)[subparagraph 3.] of this subsection.~~

(2) The local implementing agency shall assess an applicant for eligibility. The assessment shall reflect:

(a) The child and parents unique strengths and needs; and

(b) The services appropriate to meet those needs.

(3) All assessments of the child and family shall be:

(a) Conducted in a nondiscriminatory manner;

(b) Selected and administered so as not to be racially or culturally discriminatory; and

(c) Conducted in the native or preferred language of the child or parent.

(4) Parental consent shall be provided to the local implementing agency before an assessment.

(5) The assessment shall:

(a) Be conducted by a family support worker professional who meets the qualifications listed in Section 3(2) of this administrative regulation; and

(b) Result in:

1. Eligibility for HANDS services, in which the family shall be referred for the development of a home visiting plan; or

2. Ineligibility for HANDS services, in which the family shall be provided with community resources, referral information, and general parenting information.

(6) Participation in the HANDS Program is[shall-be] voluntary.

(7)(3) Participation in the HANDS Program shall be discontinued if[prevented or terminated if one (1) of the following occurs]:

- (a) The child dies[Death of the fetus or infant];
- (b) The family elects to withdraw from the program;
- (c) The family moves out of state;
- (d) Contact with the family is lost; or
- (e) The family repeatedly fails to participate in program activities.[-; or]

[(f)] [The goals established for the family are met.]

[(4)] [A screening shall include the following components:]

[(a)] [Using the ACH-300, Referral Record Screen, a provider shall determine eligibility][of an applicant by:]

[1.-] [Face-to-face interview; or]

[2.-] [Evaluation of health records;]

[(b)] [If an individual's screening indicates eligibility for HANDS services, the individual shall be referred for an assessment; and]

[(c)] [If an individual's screening indicates ineligibility for HANDS services, the individual shall be provided with community resource and referral information.]

[(5)] [An assessment shall:]

[(a)] [Consist of the following components:]

[1.-] [Using the ACH-302, Parent Survey Summary, and ACH-303, Parent Survey Score Sheet, a comprehensive needs assessment shall be performed by conducting a face-to-face interview with the child, mother, and family to include information regarding each parent's:]

[a.-] [Childhood experience;]

[b.-] [Lifestyle behaviors and mental health;]

[c.-] [Experience and expectations for parenting;]

[d.-] [Coping skills;]

[e.-] [Support system;]

[f.-] [Stress and anger management skills;]

[g.-] [Expectations of the infant's developmental milestones and behaviors;]

[h.-] [Plans for the child's discipline;]

[i.-] [Perception of the new infant; and]

[j.-] [Bonding and attachment to the infant; and]

[2.-] [Arrangement for delivery of needed services;]

[(b)] [Be conducted by:]

[1.-] [A social worker;]

[2.-] [A registered nurse;]

[3.-] [A graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that A master's degree in a human services field may be substituted for the one (1) year experience; or]

[4.-] [A graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training; and]

[(c)] [Result in:]

[1.-] [Eligibility for HANDS services, in which the individual shall be referred for the development of a home visiting plan; or]

[2.-] [Ineligibility for HANDS services, in which the individual shall be provided with community resource and referral information and general parenting information.]

Section 3. Provider Qualifications.

(1) A family support worker paraprofessional shall be a:

(a) High school graduate or holder of a general education development credential[GED] who[-:]

[1.-] is at least eighteen (18) years of age;

[2.-] Has received department training in:

1.[a.-] Ongoing assessment of family strengths and needs;

2.[b.-] Service plan development;

3.[c.-] Evidence-based home visiting model;

4.[d.-] Coordination of services; and

5.[e.-] Evaluation; and

[c][3.-] Is supervised by a registered[public health] nurse or licensed social worker.[-:]

(2) A family support worker professional shall be a:

(a) Licensed[-:]

[(b)] [Public health] nurse who holds[has] a valid Kentucky Board of Nursing license as a registered nurse or advanced practice registered nurse;

(b)[(c)-]

[1.-] Licensed social worker who holds a valid Kentucky[meets the requirements for licensure by the State] Board of [Examiners of] Social Work license;

[c][2.-] Graduate with a master's degree in human services or closely related field who shall be supervised by a registered nurse or licensed social worker; or

(d) [social work from an accredited institution; or]

[3.-] Graduate with a bachelor's degree in early childhood education, human services, or closely related field who shall be supervised by a registered nurse or licensed social worker.[social work from an accredited institution;]

(3) A HANDS supervisor shall be a:

(a) Licensed nurse who holds a valid Kentucky Board of Nursing license as a registered nurse or advanced practice registered nurse; or

(b) Licensed social worker who holds a valid Kentucky Board of Social Work license.

[(4)][(d)] [Graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or]

[(e)] [Graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training.]

[(2)] A local implementing agency[health department] shall meet the requirements to provide HANDS services if:

(a) ~~[-The] [its] [- staff or subcontractor receives the required training provided by the department to become a family support worker;~~

[(b)] It assures that appropriate staff meet the licensure requirements of the department pursuant to subsection (1) or (2)[(b) or (e)] of this section;

[(b)][(c)] It assures supervision by licensed personnel pursuant to subsection (3)(a) or (b)[subsection (1)(b) or (e)] of this section; **and**

[(c)][(d)] It reports program data from Section 4(1) of this administrative regulation into the online HANDS database no later than the first Sunday of the month following the date of service[-; **and** (e) It abides by the policies of the HANDS program].

Section 4. Services.

(1) Home visitation may take place in the client's home or another community site if justified in the record. A home visit[visitation] shall include[the][following]:

(a) Monitoring the child[of the child's, mother's,] and family's progress by:

1. Making referrals to community resources;

2. Tracking appointments to ensure they are being kept;

3. Following up on referrals[Performing follow-up services as identified by the provider]; and

4. Performing periodic evaluations of [the-] participant's changing needs;

(b) The preparation and maintenance of case records that document[which shall be documented with] contacts, services needed, reports, and progress;

(c) Consultations with the family[parent or primary caregiver] on positive pregnancy outcomes, optimal child growth and development, safe and healthy[health and safe] homes, and family decision making and self-sufficiency; and

(d) Crisis assistance.

(2)(a) Service frequency shall be provided in accordance with the level of need of the parent or family[- pursuant to ACH-306, Parent Completion LEVELS-].

(b) The frequency of visitation shall be lessened as the family meets goals agreed to by the provider and the participant.

[(3)] [Between the second and third birthday, home visitation

services shall be limited to a child whose family does not progress beyond level I of ACH-306, Parent Completion LEVELS].]

Section 5. Appeal Rights.

(1) A local implementing agency[provider] shall notify an individual who does not meet criteria for admission or continuation in the program or who has had a service discontinued, in writing, within ten (10) days of the denial or discontinuance.

(2) An individual wishing to appeal an adverse action by the local implementing agency shall notify the department in writing within thirty (30) days of the date of the notice identified in subsection (1) of this section that a hearing is requested.

(3) Notice of an administrative hearing shall be provided in accordance with KRS 13B.050.

(4) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

Section 6. Tele-service Delivery Methods.

(1)(a) HANDS home visitation services that are otherwise designated as face-to-face in accordance with this administrative regulation may be provided through tele-service delivery methods with informed parental consent.

(b) These services shall include those listed in Sections 2(5) and 4 of this administrative regulation.

(c) Verbal and written consent shall be provided for each child in a shared household. For example, if the family has twins, verbal and written consent shall be provided for each child.

(2) Tele-service delivery methods shall be reimbursed at the usual and customary rate.[Incorporation by Reference. (1) The following material is incorporated by reference:]

[a] ["ACH-300, Referral Record Screen", 5/2016;]

[b] ["ACH-301, Consent for Services", 5/2016;]

[c] ["ACH-302, Parent Survey Summary", 5/2016;]

[d] ["ACH-303, Parent Survey Score Sheet", 5/2016; and]

[e] ["ACH-306, Parent Completion LEVELS", 5/2016;]

(2) [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

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

CABINET FOR HEALTH AND FAMILY SERVICES Department For Public Health Division of Public Health Protection and Safety (As Amended at ARRS, December 11, 2023)

902 KAR 45:065. Tattooing.

RELATES TO: KRS [194A.050, 211.005, 211.015, 211.025, 211.760, 383.085, 387.010, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of tattooing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to places of business that provide tattooing, tattooing equipment, the control of disease, parental consent and age restrictions for tattooing, and other matters necessary to protect public health[- (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health]. This administrative regulation

establishes the standards for tattooing.

Section 1. Definitions.

(1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam.

(3) "Blood" is defined by 29 C.F.R. 1910.1030.

(4) "Bloodborne pathogen training" means training that meets the requirements established in 29 C.F.R. 1910.1030.

(5) "Contaminated" is defined by 29 C.F.R. 1910.1030.

(6) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.

~~(7) ["Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially infectious material in the process of tattooing.]~~

~~(8) ["Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection.]~~

~~(8) [(9)] "Hand washing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.~~

~~(9) [(10)] "Instrument" means any tattooing implement that comes into contact with blood or skin to be tattooed such as needles, needle bars, needle tubes, or other implements used to insert pigment.~~

~~(10) [(11)] "Minor" is defined by KRS 387.010(1).~~

~~(11) [(12)] "Mobile studio" means a tattooing studio that is designed to be readily movable.~~

~~(12) [(13)] "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number[,] and expiration date[,] to render them free of all microorganisms.~~

~~(13) [(14)] "Registration" means the issuance of a document by the local health department to a tattoo artist authorizing the tattoo artist to engage in the business of tattooing.~~

~~(14) "Regulated waste" is defined by 29 C.F.R. 1910.1030.~~

~~(15) "Service animal" is defined by 28 C.F.R. 36.104.~~

~~(16) "Sterilization" means a validated process used to render a product free from viable microorganisms.~~

~~(17) "Studio" means a facility as defined by KRS 211.760(1)(b).~~

~~(18) "Studio certificate[certification]" means the [issuance of a] document issued by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.~~

~~(19) "Studio owner" means:~~

~~(a) An owner of a facility where tattooing is conducted;~~

~~(b) A sole proprietor who performs tattooing; or~~

~~(c) A person who employs tattoo artists.~~

~~(20) "Tattoo artist" means a person registered by the local health department to engage in tattooing.~~

~~(21) "Tattooing" is defined by KRS 211.760(1)(c).~~

~~(22) "Temporary permit" means a permit to operate at a fixed location for no more than seven (7) calendar days, and that:~~

~~(a) Is nontransferable; and~~

~~(b) Cannot be renewed for ninety (90) days after the expiration.~~

~~(23) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.~~

Section 2. Registration of Tattoo Artist.

(1) A person shall not advertise or solicit business with the intent to perform tattooing, or use or assume the title of tattooist, unless registered with the local health department in the district or county where the person is to tattoo.

(2) All tattooing shall be under the authority[auspices] of a Kentucky certified studio.

(3) A tattoo artist shall not engage in the act of tattooing unless that person has proof of completion of bloodborne pathogen training.

(4) The artist shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration as a tattoo artist shall be at least eighteen (18) years of age at the time of application.

(6) An applicant for registration shall submit to the local health

department in the district or county where the applicant intends to perform tattooing:

(a) A completed DFS-303, Application for Certification or Registration _____ available _____ at <https://www.chfs.ky.gov/agencies/dph/dafm/Pages/lhdddocuments.a.spx>;

(b) Payment of \$100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.

(7) The tattoo artist registration shall be:

(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and

(c) Nontransferable from:

1. One (1) person to another; ~~or~~

2. ~~from~~ One (1) district or county to another.

(8) Each registration shall be valid for one (1) calendar year and expire on December 31st of each year.

(9) A late renewal fee of fifty (50) dollars shall be assessed on each tattoo artist registration renewal application not received by January 31st each year.

Section 3. Studio Certification.

(1) A person shall not engage in the business of tattooing unless the owner of the facility holds a studio certificate~~[certification]~~ issued by the local health department in the district or county where the person is to tattoo.

(2) A holder of a studio certificate~~[certification]~~ issued under this administrative regulation shall not allow a person to tattoo unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) An application for a studio certificate~~[certification]~~ shall be:

(a) On DFS-200, Application for Permit or License available at <https://www.chfs.ky.gov/agencies/dph/dafm/gendocs/DFS200.pdf>;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. \$400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars for each additional work station over four (4).

(4) A studio certificate~~[certification]~~ shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) The studio certificate~~[certification]~~ shall be:

(a) Prominently displayed to the public in the studio; and

(b) Nontransferable from:

1. One (1) person to another; ~~or~~

2. ~~from~~ One (1) location to another.

(6) The studio certificate~~[certification]~~ shall expire December 31st each year.

(7) A late renewal fee of \$100 shall be assessed on each studio certificate~~[certification]~~ renewal application not received by January 31st each year.

Section 4. Studio Requirements.

(1) A studio shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles;

(e) Be well ventilated;

(f) Not permit the presence of a pet or other animal in the studio, except for a service animal;

(g) Not use a room otherwise used as living or sleeping quarters;

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;

(i) Have convenient, clean, and sanitary toilet and hand-washing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, covered waste receptacle, and self-closing door;

(j) Be organized to keep clean areas separate from contaminated areas;

(k) Have a utility sink that shall only be used to wash

contaminated instruments;

(l) Use, clean, and maintain equipment according to manufacturers' recommendations;

(m) Use an approved disinfectant;

(n) Have plumbing sized, installed, and maintained in accordance with 815 KAR Chapter 20;

(o) Have sufficient potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8; and

(p) Dispose of sewage, including liquid waste, by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

(2) A workstation shall:

(a) Have nonporous, smooth, easy-to-clean floors and walls;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of smooth, nonporous material able to withstand repeated cleaning and disinfecting;

(c) Be kept clean, organized, and in good repair;

(d) 1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, retain the original container on the studio premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high between workstations;

(f) Have 100 foot-candles of light at the procedure level;

(g) Have unimpeded access to a hand sink;

(h) Have a sink for each artist with hot and cold water, delivered by a faucet, operated by wrist, knee, or foot action, or other hands-free method;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single-use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

(i) Be designated as a tattoo workstation, and shall not be used for any other purpose;

(j) Have plastic or metal waste receptacles:

1. With or without a lid; and

2. If the waste receptacle has a lid, the lid shall be foot operated; and

(k) Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization.

(1) A studio using any reusable instruments, materials, or supplies may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An ultrasonic cleaner; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments and equipment.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

2. The cleaning area shall be equipped in accordance with paragraph (a)1. of this subsection.

3. The ultrasonic cleaner shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items.

(2) A studio that uses only ~~presterilized~~~~[pre-sterilized]~~ disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(3) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized on the handles.

(4) Instruments shall be processed as follows:

(a) Soak contaminated reusable instruments in a covered container of cool water with detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms;

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

(d) Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e) Take instruments apart and rinse in warm water;

(f) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms;

(h) Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, allow to air dry; and

(i) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(5) Autoclave equipment. Equipment used to sterilize instruments shall ~~[meet the following requirements]~~:

(a) ~~Be~~~~[The equipment was]~~ sold as sterilizing equipment for medical instruments;

(b) ~~Be~~~~[The equipment is]~~ used, cleaned, and maintained to manufacturer's instructions; and

(c) ~~Meet~~~~[The equipment meets]~~ the minimum requirements for sterilization as verified by a negative spore test.

(6)(a) Reusable instruments placed in contact with skin that is tattooed shall be cleaned and sterilized;

(b) Disinfection shall not be used in place of cleaning and sterilization; and

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(7) Instrument sterilization. Instruments that touch skin to be tattooed shall be sterilized as follows:

(a) Wash hands and forearms;

(b) Use clean disposable, single-use gloves, such as surgical or examination gloves;

(c) Package cleaned instruments individually in:

1. Paper-and-plastic peel-pack with color change indicator; or

2. Package as set-ups with color change indicator;

(d) Label with content, date, lot number, and preparer's initials;

(e) Load the sterilizer and process according to the manufacturer's directions;

(f) Remove the items from autoclave only when completely dry and cool;

(g) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and

(h) 1. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and

2. New packaging shall be used when instruments are resterilized.

(8) Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested:

1. During the initial installation;

2. After any major repair; and

3. At least monthly by using a commercial biological monitoring system;

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on sterilizer log.

(9) Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;

(c) Preparer's name;

(d) The general contents of the load;

(e) The exposure time and temperature or the sterilizer recording chart or tape; and

(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude any tattoo artist who is:

(a) Infected with a disease in a communicable form that can be transmitted by blood;

(b) A carrier of organisms that cause disease;

(c) Infected with a boil or an infected wound; or

(d) Diagnosed with an acute respiratory infection;

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review, and distribute tattoo artist registrations for artists registered with~~[issued for employees of]~~ the certified studio. If the artist is no longer registered with~~[employed by]~~ the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

(4) Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:

(a) Full name;

(b) Date of birth;

(c) Home address;

(d) Phone number;

(e) Email address if available;

(f) Photograph of tattoo artist; and

(g) Complete description of all tattooing procedures performed by the tattoo artist;

(5) Maintain a current copy of this administrative regulation at the studio for use by tattoo artists;

(6) Maintain an adequate supply of sterilized needles and tubes for each artist;

(7) Not resterilize or reuse single-use, disposable components; and

(8) If presterilized, disposable instruments are utilized, maintain~~[the following records shall be maintained]~~ and make~~[made]~~ available the following records at all times to the local health department:

(a) An accurate inventory of all purchased presterilized instruments by name with the date purchased and the quantity on hand; and

(b) Invoices for the purchase of all purchased presterilized instruments.

Section 7. Tattooing of Minors. (1) A person shall not perform any tattoo procedure on a minor without custodial parent or legal guardian~~[parental]~~ consent.

(2) A minor shall be at least sixteen (16) years old with custodial parent or legal guardian consent to tattooing.

(3) Consent shall be provided by a written notarized statement that contains an official seal or assigned identification of the notary.

(4) The notarized statement shall contain:

(a) The printed name of the custodial parent or legal guardian;

(b) The government issued photo identification number of the custodial parent or legal guardian;

(c) The address and phone number of the custodial parent or legal guardian;

(d) The printed name of the minor child;

(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if applicable;

(g) A statement that the custodial parent or legal guardian is fully aware of the tattoo procedure and gives his or her consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5) The custodial parent or legal guardian, and minor client shall

complete the attestation requirements of Section 8(3)(g) of this administrative regulation.

Section 8. Client Information and Records. (1) Before receiving a tattoo, the client shall be provided written information that:

- (a) Tattooing poses a risk of infection; ~~that~~
- (b) Tattooing is permanent; ~~and that~~
- (c) Removal of a tattoo may leave scars.

(2) Before the application of a tattoo, the client shall be provided written, verbal, or electronic aftercare instructions that includes ~~the following information~~:

- (a) Information on the care of the site of the tattoo;
- (b) Instructions on possible side effects;
- (c) Information on any restrictions;
- (d) Information on signs and symptoms of infection; and
- (e) Instructions to consult a physician if signs and symptoms of infection, such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any tattoos shall be kept by the studio owner. The record shall include ~~the following information~~:

- (a) Studio name and ~~certificate~~certification number;
- (b) The date the procedure was performed;
- (c) Client's name, date of birth, address, and phone number;
- (d) 1. Copy of client's government issued photo ID, if applicable;

or

2. Copy of custodial parent or legal guardian's government issued photo ID;

- (e) Name of the tattoo artist who performed the procedure;
- (f) The type, location, and description of the procedure; and
- (g) Client's attestation to the fact that the client:
 - 1. Is not intoxicated or under the influence of drugs or alcohol;
 - 2. Is not pregnant; and
 - 3. Has not ingested an anticoagulant that thins the blood or interferes with blood clotting within the past twenty-four (24) hours.
- (4) Records of each client shall be maintained for two (2) years.
- (5) Client records and consent and other required records shall be made readily available to inspectors.

Section 9. Disposal of Regulated~~Contaminated~~ Wastes. All wastes produced during the process of tattooing shall be separated for disposal into two (2) classifications as established in this section.

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company.

(2) Regulated~~Contaminated~~ waste shall be bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in a site~~an~~ approved ~~site~~ by a general trash hauler.

Section 10. Standard Operating Procedures for Tattooing.

(1) Tattooing shall not be applied on skin that has a rash, pimples, evidence of infection, open lesions, sunburn, or manifests any evidence of an unhealthy condition without written clearance by a licensed medical provider.

(2) The tattoo artist shall follow the procedures listed in this section in preparation for tattooing.

(a) The tattoo artist and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product in the workstation.

(b) The tattoo artist shall wash hands and forearms prior to and after every procedure.

(c) The tattoo artist shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the application of the tattoo:

- 1. Both gloves shall be removed immediately and discarded;
- 2. The hands and forearms shall be washed; and
- 3. New, clean examination gloves shall be used.

(d) The tattoo artist shall use a new disposable lap cloth, drape, or apron for each client. All lap cloths, drapes, and aprons shall be stored in a closed cabinet or container until used.

(e) The tattoo artist shall wear clean clothing.

(3) All instruments, equipment, and items to be used in the

procedure shall be placed on plastic film or a disposable, plastic backed towel.

(4) All inks, dyes, and pigments used in a procedure shall be:

- (a) Nontoxic;
- (b) Dispensed from containers in a manner to prevent contamination of the unused portion in the supply bottle; and
- (c) Discarded:
 - 1. After the procedure; or
 - 2. When the original container label becomes unreadable.

(5) Inks, dyes, and pigments transferred from bulk containers shall be labeled with:

- (a) Manufacturer name;
- (b) Lot number; and
- (c) A statement of nontoxicity.

(6) All devices used to apply inks, dyes, or pigments shall be designed to prevent backflow of inks or pigments into the machine.

(7) If a workstation rinse cup is used, a fresh cup shall be used for each client and discarded immediately upon completion of the procedure.

(8) All single-use ointment tubes, applicators, and supplies placed on the plastic backed towel shall be discarded immediately after use.

(9) Tattoo needles shall be used once and discarded.

(10) If the tattoo artist uses any reusable components, autoclave equipment shall be required.

(11) The sharps container and waste receptacle shall be positioned to be within easy reach and in a manner to prevent contamination.

Section 11. Application of the Tattoo. The tattoo artist shall use the procedure in this section when applying a tattoo.

(1) Disinfect the chair or table and tray.

(2) Position the client.

(3) Arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic backed towel within easy reach.

(4) Wash hands and forearms, and use new, clean examination gloves.

(5) Gently clean the client's skin with soap and water and apply an antiseptic that is appropriate for the area where the tattoo is to be applied. If shaving is necessary, use a new, single-use disposable razor.

(6) Acetate or other reusable stencils shall not be used. Place the design on the skin by one (1) of the following methods:

- (a) Free-hand drawing using a new disposable marker; or
- (b) Apply a single-use hectographic or tissue stencil using an approved product dispensed from a container in a manner that does not contaminate the unused portion.

(7) Remove gloves, wash hands, and use new clean examination gloves.

(8) Open sterile needles in front of the client and place them into the tattoo machine without touching the end of the needles.

(9) Apply the tattoo.

(10) Apply a thin layer of suitable cream and if appropriate, cover the area with a suitable nonstick dressing. Plastic film intended for household use shall not be used.

(11) When the tattooing is complete, the tattoo artist shall answer any questions and provide the client with instructions regarding the tattoo and aftercare.

(12) Immediately after the client leaves the workstation, the tattoo artist shall break down the workstation, properly dispose of any sharps, soak any reusable instruments for later cleaning, and clean and disinfect any surface that may have become contaminated.

Section 12. Standard Operating Procedures for a Mobile Studio.

(1) An application for mobile studio certificate~~certification~~ shall be:

- (a) On DFS-200, Application for Permit or License;
- (b) Submitted to the local health department in the district or county where the mobile studio owner resides; and
- (c) Accompanied by a fee of:
 - 1. \$400 for the studio with one (1) to four (4) workstations~~work~~

stations]; and

2. An additional fifty (50) dollars for each additional workstation~~[work-station]~~ over four (4).

(2) The mobile studio certificate~~[certification]~~ shall be:

- (a) Valid for statewide operation;
- (b) Prominently displayed to the public in the mobile studio; and
- (c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of \$100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, the tattoo artist shall be registered with the local health department in each district or county where the mobile studio is operated, and pay the appropriate fees.

(6) The mobile studio shall be used exclusively for performing tattooing. Habitation, cooking, and animals, except service animals, shall not be allowed in the mobile studio.

(7) The mobile studio shall:

- (a) Meet the sterilization, operating, and clientele requirements, and tattoo performance procedures as a stationary studio; and
- (b) Be inspected by the local health department prior to operation.

(8) Any on-board restroom shall be supplied with:

~~(a)~~ Hot running water and cold running water;

~~(b)~~ and shall be supplied with Toilet paper;

~~(c)~~ Liquid soap;

~~(d)~~ Single-use paper towels from a sanitary dispenser;

~~(e)~~ A covered waste receptacle; ~~(f)~~ and

~~(f)~~ A self-closing door.

(9) If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with hand-washing facilities.

(10) All plumbing shall comply with the requirements of 815 KAR Chapter 20.

(11)(a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for hand washing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted with a backflow prevention device.

(12)(a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.

Section 13. Standard Operating Procedures for a Temporary Permit.

(1) The event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or License, accompanied by a \$100 permit fee for each workstation;

(b) A layout of the event floor showing where the tattoo artists will be tattooing;

(c) A list of all tattoo artists participating in the event that includes:

- 1. Name of tattoo artist;
- 2. Artist date of birth;
- 3. Home address;
- 4. Phone number;
- 5. Email address;
- 6. Proof of artist completion of bloodborne pathogen training;
- 7. Studio name;
- 8. Studio address;
- 9. Studio owner name; and
- 10. Description of procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall:

(a) Be responsible for ensuring that the event is run in a manner that is safe for the tattoo artists and the general public;

(b) Provide a separate cleaning and sterilization room as a backup, unless only presterilized~~[pre-sterilized]~~ disposables are used for the event;

(c) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(d) Arrange for pick-up and disposal of regulated~~[contaminated]~~ waste in accordance with Section 9 of this administrative regulation; and

(e) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(3) Prior to the event, the tattoo artist participating in the event shall:

(a) Be registered in accordance with Section 2 of this administrative regulation with the local health department in the district or county where the temporary studio is operated;

(b) Submit the \$100 registration fee required by Section 2(6)(b) of this administrative regulation; and

(c) 1. Ensure an adequate supply of presterilized instruments and supplies are available to last the length of the event; or

2. Provide certification of an autoclave negative spore test completed within thirty (30) days prior to the event if tattooing with reusable instruments.

(4) The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5 ft. x 10 ft., and be constructed in a manner to separate the tattoo artist from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during tattooing;

(b) Have a floor and sides that are:

- 1. Smooth, nonporous, and easy to clean; or
- 2. Covered in plastic if the floor and sides are not smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the procedure level; and

(d) Be equipped with a hand-wash facility that shall be:

- 1.a. A portable hand-washing station; or
- b. A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i) Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is supplied with a bucket to catch the wastewater; and

(iii) Has a minimum reserve of five (5) gallons warm potable water available; and

2. Supplied with:

- a. Liquid soap; and
- b. Single-use paper towels from a sanitary dispenser.

(5) Wastewater shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

Section 14. Inspection of Studios.

(1) At least twice per year, the cabinet or the local or district health department shall inspect each studio and shall make as many additional inspections and re-inspections as are necessary for the

enforcement of this administrative regulation.

(2)(a) The cabinet or the local or district health department inspector shall record the inspection findings on an inspection report form DFS-342.

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original inspection report to the certificate holder or the holder's designee. The findings shall:

(a) Set forth the specific violations, if found; and

(b) Establish a period of time for the correction of the violations specified, pursuant to the provisions established in this paragraph.

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) but not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5) Notices provided for under this administrative regulation shall be ~~deemed to have been~~ properly served if:

(a) The original of the inspection report form or other notice has been delivered personally to the certificate holder or person in charge; ~~if~~ or

(b) The notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.

(6) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the certificate or the individual's registration.

(7) Temporary and mobile studios shall correct any violative conditions within twenty-four (24) hours.

Section 15. Suspension of Studio Certificates or Individual's Registration.

(1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the certificate holder or registered individual if:

(a) The cabinet or the local or district health department has reason to believe that an imminent public health hazard exists;

(b) The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c) An inspection of a studio reveals a rating score of less than sixty (60).

(2) The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference in accordance with 902 KAR 1:400.

(3) The cabinet or the local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference is requested.

~~[(4) A person whose studio certificate or individual registration has been suspended may, at any time, make application for reinstatement of the certification or registration in accordance with 902 KAR 1:400, Section 2.]~~

Section 16. Revocation of a Studio Certificate or an Individual's Registration.

(1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the local or district health department shall notify the studio certificate holder or registered ~~artist~~~~individual~~, in writing:

~~(a) Stating the reasons [for which] the studio certificate~~~~[certification]~~ or individual registration is subject to revocation; and

~~(b) Advising that the studio certificate~~~~[certification]~~ or individual registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference is filed with the cabinet by the ~~certificate~~~~[certification]~~ or registration holder within the ten (10) day period.

(3) A studio ~~certificate~~~~[certification]~~ or individual registration may be suspended for cause pending its revocation or an administrative conference relative to the revocation.

~~Section 17. [Appeals.—A studio certificate or individual registration holder or an applicant aggrieved by a decision of the cabinet or the local or district health department may request an administrative hearing in accordance with 902 KAR 1:400.~~

~~Section 18. [Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) DFS-200, "Application for Permit or License", 07/19;~~

~~(b) DFS-200, "Application for Permit or License", 07/19;~~

~~(b) DFS-303, "Application for Certification or Registration", Rev. 9/23/249; and~~

~~(c) [(b)] (e) DFS-342, "Tattoo and Body Piercing Studio Inspection Report", Rev. 2/19.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, ~~Public~~~~[Food]~~ Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://chfs.ky.gov/agencies/dph/dafm/Pages/lhdocuments.aspx>.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department For Public Health

Division of Public Health Protection and Safety

(As Amended at ARRS, December 11, 2023)

902 KAR 45:070. Body piercing and ear piercing.

RELATES TO: KRS ~~[194A.050, 211.005, 211.015, 211.025, 383.085, 387.010, 508.125, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760

NECESSITY, FUNCTION AND CONFORMITY: KRS

194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of body piercing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to places of business that provide body piercing or ear piercing, the equipment used in body piercing and ear piercing, the control of disease, parental consent for body piercing or ear piercing, the age restrictions for body piercing, and other matters necessary to protect public health: (a) health and cleanliness of places of business; (b) sterilization of body piercing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent body piercing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to

protect public health]. This administrative regulation establishes the standards for body piercing and ear piercing[required by KRS 211.760(3)].

Section 1. Definitions.

- (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.
- (2) "Autoclave" means a device intended to sterilize products by means of pressurized steam.
- (3) "Blood" is defined by 29 C.F.R. 1910.1030.
- (4) "Bloodborne pathogen training" means training that meets the requirements established in 29 C.F.R. 1910.1030.
- (5) "Body piercer" means a person registered by the local health department to engage in body piercing or ear piercing.
- (6) "Body piercing" is defined by KRS 211.760(1)(a).
- (7) "Contaminated" ~~is defined by 29 C.F.R. 1910.1030[means the presence of or reasonably expected presence of blood or other potentially infectious material in or on the surface of an item].~~
- (8) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030.
- (9) ~~["Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially infectious material in the process of body piercing.~~
- ~~(10) "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection.~~
- ~~[(11) "Ear piercing" means a process by which the lobe or outer perimeter of the ear is pierced by use of a hand-pressured instrument utilizing presterilized earrings.]~~
- ~~(12) [(12)] "Ear piercing instrument" or "piercing instrument" means a hand-pressured instrument, which does not make contact with the client, utilizing encapsulated presterilized earrings used exclusively for piercing the lobe of the ear.~~
- ~~(13) [(13)] "Handwashing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.~~
- ~~(14) [(14)] "Instrument" means any body-piercing implement that comes into contact with blood or skin to be pierced, such as needles, needle tubes, forceps, hemostats, tweezers, or other implements used to puncture or pierce the human body.~~
- ~~(15) [(15)] "Jewelry" means any personal ornament or decoration inserted into a newly-pierced area.~~
- ~~(16) [(16)] "Limited ear piercing" means piercing only the lobe of the ear with an ear piercing instrument.~~
- ~~(17) [(17)] "Minor" is defined by KRS 387.010(1).~~
- ~~(18) [(18)] "Mobile studio" means a body-piercing studio that is designed to be readily movable.~~
- ~~(19) [(19)] "Purchased presterilized" means jewelry or instruments[procedure set-ups] that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date to render them free of all microorganisms.~~
- ~~(20) [(20)] "Registration" means the issuance of a document by the local health department to a body piercer or ear piercer authorizing the person named in the document to engage in the business of body piercing or ear piercing.~~
- ~~(21) [(21)] "Regulated waste" is defined by 29 C.F.R. 1910.1030.~~
- ~~(22) [(22)] "Service animal" is defined by 28 C.F.R. 36.104.~~
- ~~(23) [(23)] "Sterilization" means a validated process used to render a product free from viable microorganisms.~~
- ~~(24) [(24)] "Studio" means a facility as defined by KRS 211.760(1)(b).~~
- ~~(25) [(25)] "Studio certificate[certification]" means the issuance of a document by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.~~
- ~~(26) [(26)] "Studio owner" means:~~
 - ~~(a) An owner of a facility where body piercing or ear piercing is conducted;~~
 - ~~(b) A sole proprietor who performs body piercing or ear piercing;~~
 - ~~(c) A person who employs body piercers or ear piercers.~~
- ~~(27) [(27)] "Temporary permit" means a permit to operate at a fixed location for no more than seven (7) calendar days[, and] that:~~
 - ~~(a) Is nontransferable; and~~
 - ~~(b) Cannot be renewed for ninety (90) days after the expiration.~~

(26) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration.

- (1) A person shall not act as or engage in the business of body piercing or ear piercing unless registered with the local health department in the district or county where the person is to body pierce or perform ear piercing.
- (2) All body piercing or ear piercing shall be under the authority[auspices] of a Kentucky certified studio.
- (3) A body piercer or ear piercer shall not engage in the act of piercing unless that person has proof of completion of bloodborne pathogen training.
- (4) The body piercer or ear piercer shall maintain documentation of completion of bloodborne pathogen training at the studio.
- (5) An applicant for registration shall be at least eighteen (18) years of age at the time of application.
- (6) An applicant for registration shall submit to the local health department in the district or county where the applicant intends to perform body piercing or ear piercing:
 - (a) A completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065;
 - (b) Payment of \$100 registration fee; and
 - (c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.
- (7) The body piercer or ear piercer registration shall be:
 - (a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;
 - (b) Prominently displayed to the public in the workstation; and
 - (c) Nontransferable from:
 1. One (1) person to another;[, or
 2. [from] One (1) district or county to another.
- (8) A registration shall be valid for one (1) calendar year and expire on December 31st of each year.
- (9) A late renewal fee of fifty (50) dollars shall be assessed on each body piercer or ear piercer certification renewal application not received by January 31st each year.

Section 3. Studio Certification.

- (1) A person shall not engage in the business of body piercing or ear piercing unless the owner of the facility holds a studio certificate[certification] issued by the local health department in the district or county where the person is to body pierce or perform ear piercing.
- (2) A holder of a studio certificate[certification] issued under this administrative regulation shall not allow a person to engage in body piercing or ear piercing unless the individual is registered in accordance with Section 2 of this administrative regulation.
- (3) An application for a studio certificate[certification] shall be:
 - (a) On DFS-200, Application for Permit or License, incorporated by reference in 902 KAR 45:065, and available at <https://www.chfs.ky.gov/agencies/dph/dafm/gendocs/DFS200.pdf>, ~~incorporated by reference in 902 KAR 45:065~~;
 - (b) Submitted to the local health department in the district or county where the studio is located; and
 - (c) Accompanied by an annual inspection fee of:
 1. \$400 for a body piercing studio with one (1) to four (4) work stations;
 2. \$200 for an ear piercing studio with one (1) to four (4) work stations; and
 3. An additional fifty dollars (\$50) for each additional work station over four (4).
 - (4) A studio certificate[certification] shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.
 - (5) A studio certificate[certification] shall be:
 - (a) Prominently displayed to the public in the studio; and
 - (b) Nontransferable from:
 1. One (1) person to another;[, or
 2. [from] One (1) location to another.
 - (6) The studio certificate[certification] shall be valid for one (1) calendar year and expire December 31st each year.

(7) A late renewal fee of one-half (1/2) the annual inspection fee shall be assessed on each studio registration renewal application not received by January 31st each year.

Section 4. Studio Requirements.

(1) A studio shall:

- (a) Be kept clean and in good repair;
- (b) Be free of insect and rodent infestation;
- (c) Store only items necessary to its operation and maintenance;
- (d) Provide artificial light of at least twenty (20) foot-candles;
- (e) Be well ventilated;
- (f) Not permit the presence of an animal in the studio, except for a service animal;
- (g) Not use a room otherwise used as living or sleeping quarters;
- (h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;
- (i) Have convenient, clean, and sanitary toilet and handwashing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, a covered waste receptacle, and a self-closing door;
- (j) Be organized to keep clean areas separate from contaminated areas;
- (k) Have a utility sink that shall only be used to wash contaminated instruments;
- (l) Use, clean, and maintain equipment according to manufacturers' recommendations;
- (m) Use an approved disinfectant;
- (n) Have plumbing sized, installed, and maintained in accordance with 815 KAR Chapter 20;
- (o) Have sufficient potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8; and
- (p) Dispose of sewage by connection to:
 1. A public sewer system, if available; or
 2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.
- (2) A workstation shall:
 - (a) Have nonporous, smooth, easy-to-clean floors and walls;
 - (b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of smooth, nonporous material able to withstand repeated cleaning and disinfecting;
 - (c) Be kept clean, organized, and in good repair;
 - (d) 1. Have all product containers clearly labeled with common product name in English; and
 2. If filling a product container from a larger bulk container, retain the original container on the premises;
 - (e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high between workstations;
 - (f) Have 100 foot-candles of light at the procedure level;
 - (g) Have unimpeded access to a hand sink;
 - (h) Have a sink for each body piercer with hot and cold water, delivered by a faucet, operated by wrist, knee, or foot action, or other hands-free method;
 1. Each sink shall be supplied with:
 - a. Liquid soap; and
 - b. Single use paper towels dispensed from a sanitary dispenser;
 - and
 2. A hand sink shall not be used for any other purpose;
 - (i) Be designated as a body piercing workstation, and shall not be used for any other purpose;
 - (j) Have plastic or metal waste receptacles:
 1. With or without a lid; and
 2. If the waste receptacle has a lid, the lid shall be foot operated;
 - and
 - (k) Have a container for disposable sharps that:
 1. Is rigid, puncture proof, and leak proof on sides and bottom;
 2. Is closeable and sealable; and
 3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio using any reusable instruments, materials, or supplies may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An ultrasonic cleaner; and

e. Autoclaving packaging materials; and

2. A second room that contains an~~for~~ autoclave for sterilization of instruments, equipment, and body jewelry or decorations.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. The ultrasonic cleaner shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, jewelry, or other items.

2. The cleaning area shall be equipped in accordance with paragraph (a)1. of this subsection.

3. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

(2) A body piercer that shares a certified studio with a tattoo artist shall have a dedicated ultrasonic cleaner for cleaning body piercing instruments or equipment.

(3) A studio that uses only presterilized~~pre-sterilized~~ disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(4) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized on the handles.

(5) Instruments shall be processed as follows:

(a) Soak contaminated reusable instruments in a covered container of cool water with detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms;

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

(d) Prepare the ultrasonic cleaner according to manufacturer's instructions;

(e) Take instruments apart and rinse in warm water;

(f) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms;

(h) Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, and allow to air dry; and

(i) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(6) Sterilization equipment. Equipment used to sterilize instruments shall ~~meet the following requirements~~.

(a) ~~Be~~The equipment was sold as sterilizing equipment for medical instruments;

(b) ~~Be~~The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) Meet~~The equipment meets~~ the minimum requirements for sterilization.

(7) Reusable instruments.

(a) Reusable instruments that come in contact~~placed in contact~~ with skin that is body pierced shall be cleaned and sterilized;

(b) Disinfection shall not be used in place of cleaning and sterilization; and

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(8) Instrument sterilization. Instruments that come in contact ~~with~~pierce the skin shall be sterilized as follows:

(a) Wash hands and forearms;

(b) Use clean disposable, single-use surgical or examination gloves;

(c) Package cleaned instruments individually in:

1. Paper and plastic peel-packs with color change indicator; or

2. Package as setups~~set-ups~~ with color change indicator;

- (d) Label with content, date, lot number, and preparer's initials;
- (e) Load the autoclave[sterilizer] and process according to manufacturer's directions;
- (f) Remove the items from autoclave only when completely dry and cool;
- (g) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and
- (h)
 1. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and
 2. New packaging shall be used when instruments are resterilized.
- (9) Sterilization equipment monitoring.
 - (a) Sterilization equipment shall be tested:
 1. During the initial installation;
 2. After any major repair; and
 3. At least monthly by using a commercial biological monitoring system;
 - (b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and
 - (c) Sterilization monitoring shall be noted on the sterilizer log.
- (10) Autoclave[Sterilizer] recordkeeping. An autoclave[A sterilizer] log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:
 - (a) Date of load;
 - (b) Lot number;
 - (c) Preparer's name;
 - (d) The general contents of the load;
 - (e) The exposure time and temperature or the sterilizer recording chart or tape; and
 - (f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

- (1) Exclude a body piercer or ear piercer who is:
 - (a) Infected with a disease in a communicable form that can be transmitted by blood;
 - (b) A carrier of organisms that cause disease;
 - (c) Infected with a boil or an infected wound; or
 - (d) Diagnosed with an acute respiratory infection;
- (2) Report any accident involving exposure to body fluids to the local or district health department;
- (3) Receive, review, and distribute body piercer or ear piercer registrations for the piercer registered with~~[issued for employees of]~~ the certified studio. If the body piercer or ear piercer is no longer registered with~~[employed by]~~ the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;
- (4) Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:
 - (a) Full name;
 - (b) Date of birth;
 - (c) Home address;
 - (d) Phone number;
 - (e) Email address;
 - (f) Photograph of body piercer or ear piercer; and
 - (g) Complete description of all body piercing or ear piercing procedures performed by the body piercer or ear piercer;
- (5) Maintain a current copy of this administrative regulation at the studio for use by body piercers or ear piercers;
- (6) Maintain an adequate supply of sterilized needles, instruments, jewelry, and other decorations for each piercer;
- (7) Not resterilize or reuse single-use, disposable components;
- (8) Maintain records in accordance with Section 8(3) of this administrative regulation;
- (9) Maintain an accurate inventory of all purchased presterilized instruments and jewelry by name with the date purchased and the quantity on hand; and
- (10) Maintain invoices for the purchase of all purchased

presterilized instruments and jewelry.

Section 7. Piercing of Minors.

- (1) A person shall not:
 - (a) Perform any body piercing or ear piercing procedure on a minor without custodial parent or legal guardian[parental] consent; and
 - (b) In accordance with KRS 508.125, perform any genital piercing on a female who is under eighteen (18) years of age.
- (2) A minor shall be at least sixteen (16) years old with custodial parent or legal guardian consent prior to body piercing, with the exception of piercing the lobe of the ear.
- (3) Consent shall be provided by a written notarized statement that contains an official seal or assigned identification of notary.
- (4) The notarized statement shall contain:
 - (a) The printed name of the custodial parent or legal guardian;
 - (b) The government issued photo identification number of the custodial parent or legal guardian;
 - (c) The address and phone number of the custodial parent or legal guardian;
 - (d) The printed name of the minor child;
 - (e) The date of birth of the minor child;
 - (f) The government issued photo identification number of the minor child, if applicable;
 - (g) A statement that the custodial parent or legal guardian is fully aware of the body piercing procedure and gives their consent for the procedure to be performed;
 - (h) The signature of the custodial parent or legal guardian; and
 - (i) The date of the signature of the custodial parent or legal guardian.
- (5) The custodial parent or legal guardian~~[, and minor client]~~ shall complete the attestation requirements of Section 8(3)(g) of this administrative regulation.

Section 8. Client Information and Records.

- (1) Before receiving a body piercing or ear piercing, the client shall be provided written information that the piercing poses a risk of infection.
- (2) Before the body piercing or ear piercing, the client shall be provided written, verbal, or electronic aftercare instructions that include the following information:
 - (a) Information on the care of the site of the piercing;
 - (b) Instructions on possible side effects;
 - (c) Information on any restrictions;
 - (d) Information on signs and symptoms of infection; and
 - (e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.
- (3) A record of all clients who have received any body piercings or ear piercings shall be kept by the studio owner. The record shall include the following information:
 - (a) Studio name and registration number;
 - (b) The date the procedure was performed;
 - (c) Client's name, date of birth, address, and phone number;
 - (d) 1. Copy of client's government issued photo ID, if applicable;
 or
 2. Copy of custodial parent or legal guardian's government issued photo identification;
 - (e) Name of the body piercer or ear piercer who performed each procedure;
 - (f) The type, location, and description of the procedure; and
 - (g) An[Client's] attestation to the fact that the client:
 1. Is not intoxicated or under the influence of drugs or alcohol; and
 2. Has not ingested an anticoagulant that thins the blood or interferes with blood clotting within the past twenty-four (24) hours.
 - (4) Records of each client shall be maintained for two (2) years.[
 -] (5) Client records,[and] consent and other required records shall be made readily available to inspectors.

Section 9. Disposal of Regulated~~[Contaminated]~~ Wastes. All wastes produced during the process of body piercing or ear piercing shall be separated for disposal into two (2) classifications as follows:

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company; and

(2) ~~Regulated~~~~[Contaminated]~~ waste shall be bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in a site[an] approved ~~[site]~~ by a general trash hauler.

Section 10. Standard Operating Procedures for Body Piercing.

(1) Sterile jewelry shall be:

(a) Made of implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium, or platinum;

(b) Free of scratches, nicks, or irregular surfaces; and

(c) Internally threaded or threadless.

(2) Body piercing shall not be performed on skin that has a rash, pimples, evidence of infection, open lesions, or sunburn, or manifests any evidence of an unhealthy condition without written clearance by a licensed medical provider.

(3)~~[(2)]~~ The body piercer shall follow the procedures listed in this section in preparation for body piercing:

(a) The body piercer and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product in the workstation;

(b) The body piercer shall wash hands and forearms prior to and after every procedure;

(c) The body piercer shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the body piercing, both gloves shall be removed immediately, discarded, hands and forearms washed, and new, clean examination gloves used;

(d) The body piercer shall wear clean clothing;

(e) All instruments, needles, jewelry, and items to be used in the procedure shall be placed on plastic film or on a plastic-backed towel;

(f) Only hollow needles shall be used for body piercing;

(g) Only presterilized jewelry shall be installed in a fresh piercing;

(h) ~~[Only sterile jewelry made of implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium, or platinum and that is free of scratches, nicks, or irregular surfaces, and internally threaded or threadless, shall be placed in newly pierced skin;~~

(i) All single-use disposable items shall be placed on plastic film or on a[the] plastic backed towel and shall be discarded after each client including:

1. Corks;
2. Rubber bands;
3. Skin prepping materials;
4. Marking devices;
5. Dental bibs;
6. Tray covers;
7. Gauze; and
8. Applicators; and

~~[(i)]~~ The sharps container and waste receptacle shall be positioned within easy reach and in a manner to prevent contamination.

Section 11. Performance of Body Piercing. The body piercer shall use the procedure in this section when performing a body piercing:

(1) Disinfect the chair or table, and tray;

(2) Wash hands and forearms;

(3) Use new disposable gloves and arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic-backed towel within easy reach;

(4) Position the client;

(5) Clean the skin, mark the location of the piercing with a new, disposable marking device, and apply an antiseptic to the area to be pierced;

(6) Remove and discard all materials used to prep the client, including gloves;

(7) Wash hands and forearms and use new, clean ~~[examination]~~ gloves;

(8) Hold or stabilize the tissue with sterile instruments only. Pierce the skin using a sterile, single-use piercing needle;

(9) Immediately after use, place all needles, snip wires, or any other sharps into a sharps container;

(10) When the body piercing is complete, answer any questions regarding the piercing and provide aftercare instructions to the client; and

(11) Immediately after the client leaves the workstation, place contaminated instruments into a covered container that is labeled "contaminated instruments" and disinfect all surfaces that have come into contact with the client or the client's tissues, including the piercing tray, chair, or table.

Section 12. Standard Operating Procedures for Limited Ear Piercing.

(1) A limited[An] ear piercing studio shall be exempt from Sections 5, 9(1), 10, and 11 of this administrative regulation.

(2) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the lobe of the ear.

(3) An ear piercer shall:

(a) Be registered in accordance with Section 2 of this administrative regulation;

(b) Not allow any eating, drinking, or use of tobacco products, an electronic cigarette, or other vapor producing product in the area where ear piercing is conducted;

(c) Obtain consent for the procedure in accordance with Section 7 of this administrative regulation;

(d) Obtain client information in accordance with Section 8 of this administrative regulation;

(e) Wash their hands and forearms before and after each piercing is performed;

(f) Wear new, clean disposable gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the ear piercing, both gloves shall be removed immediately, discarded, hands and forearms washed, and new, clean examination gloves used;

(g) Wear clean clothing;

(h) Load presterilized, encapsulated cartridges for earrings into the ear piercing instrument without touching the cartridge, stud, or clasp;

(i) Answer any questions prior to performing an ear piercing;

(j) Clean the ear with an antiseptic towelette before the procedure and mark the location of the piercing with a single use disposable marking pen or a surgical marking pen sanitized by design such as an iodine-based or alcohol;

(k) Provide the client with instructions regarding aftercare; and

(l) Immediately after the client leaves the ear piercing area, thoroughly disinfect the piercing instrument with an approved disinfectant.

(4) When not in use, the piercing instrument shall be stored in a cabinet or other place that is protected from dust and contamination.

Section 13. Standard Operating Procedures for a Mobile Studio.

(1) An application for mobile studio certificate[certification] shall be:

(a) On DFS-200, Application for Permit or License~~[-incorporated by reference in 902-KAR-45:065];~~

(b) Submitted to the local health department in the district or county where the mobile studio owner resides; and

(c) Accompanied by a fee of:

1. \$400 for the studio with one (1) to four (4) workstations[work stations]; and

2. An additional fifty dollars (\$50) for each additional workstation[work station] over four (4).

(2) The mobile studio certificate[certification] shall be:

(a) Valid for statewide operation;

(b) Prominently displayed to the public in the mobile studio; and

(c) Nontransferable from one (1) person to another.

(3) The mobile studio certificate shall expire December 31 each year.

(4) A late renewal fee of \$100 shall be assessed on each mobile studio registration renewal application not received by January 31 each year.

(5) If not currently registered in accordance with Section 2(6) of this administrative regulation, each body piercer and ear piercer

shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.

(6) The mobile studio shall be used exclusively for performing body or ear piercing. Habitation, cooking, and animals, except service animals, shall not be allowed in the mobile studio.

(7) The mobile studio shall be inspected by the local health department prior to operation.

(8) Any onboard~~[on-board]~~ restroom shall be supplied with hot and cold running water and shall be supplied with toilet paper, liquid soap, ~~[and]~~ single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(9) If the vehicle lacks an onboard~~[on-board]~~ restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with handwashing facilities.

(10) All plumbing shall comply with the requirements of 815 KAR Chapter 20.

(11)(a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for handwashing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted with a backflow prevention device.

(12)(a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system.

Section 14. Standard Operating Procedures for a Temporary Permit.

(1) At least thirty (30) days prior to the event date, the event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or License, incorporated by reference in 902 KAR 45:065, incorporated by reference in 902 KAR 45:065, accompanied by a \$100 registration fee for each workstation;

(b) A layout of the event floor showing where body piercing and ear piercing will be performed;

(c) A list of all body piercers and ear piercers participating in the event that includes:

1. Name of body piercer or ear piercer;

2. Piercer's date of birth;

3. Home address;

4. Phone number;

5. Email address;

6. Proof of piercer completion of bloodborne pathogen training;

7. Studio name;

8. Studio address;

9. Studio owner name; and

10. Description of body piercing and ear piercing procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall be

responsible for ensuring that the event is run in a manner that is safe for the body piercers, ear piercers, and the general public.

(3) Each participant who performs body or ear piercing shall bring enough presterilized instruments and supplies to last for the whole event.

(4) The event coordinator or studio owner shall:

(a) Provide a separate cleaning and sterilization room as a backup, unless only presterilized~~[pre-sterilized]~~ disposables are used for the event;

(b) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(c) Arrange for pickup~~[pick-up]~~ and disposal of regulated~~[contaminated]~~ waste in accordance with Section 9 of this administrative regulation; and

(d) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(5) The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5 ft. x 10 ft., and be constructed in a manner to separate the body and ear piercer from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during piercing.

(b) Have a floor and sides that are smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the level where the piercing is conducted;

(d) Be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that needs to be protected to prevent cross-contamination; and

(e) Be equipped with a hand-wash facility that shall be:

1.a. A portable handwashing station; or

b. A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i) Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is supplied with a bucket to catch the wastewater; and

(iii) Has a minimum reserve of five (5) gallons of warm potable water available; and

2. Is supplied with:

a. Liquid soap; and

b. Single use paper towels from a sanitary dispenser.

(6) Waste water shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10.

Section 15. Inspection of Studios.

(1) The cabinet or the local or district health department shall inspect each body piercing studio at least twice per year and each ear piercing studio once per year and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet or the local or district health department inspector shall record the inspection findings for body piercing studios on an inspection report form DFS-342, incorporated by reference in 902 KAR 45:065.

(b) The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original inspection report to the certificate holder or designee. The findings shall:

(a) Set forth the specific violations if found; and

(b) Establish a period of time for the correction of the violations specified, pursuant to the provisions established in this paragraph.

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) and not

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more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5)(a) The cabinet or local health department inspector shall record the findings for limited ear piercing studios on inspection report form DFS-253.

(b) The inspection report form shall summarize the requirements of this administrative regulation.

(c) The inspector shall provide the original of the inspection report to the certificate holder or designee.

(d) The findings shall set forth the specific violations if found.

(e) All violations shall be corrected within twenty-four (24) hours.

(6) Notices provided for under this administrative regulation shall be ~~[deemed to have been]~~ properly served if:

~~[(a) The original inspection report form or other notice has been delivered personally to the certificate holder or person in charge;],~~ or

~~[(b) The notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.~~

(7) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the studio certificate or the individual's registration.

(8) A temporary or mobile studio shall correct any violative conditions within twenty-four (24) hours.

Section 16. Suspension of Studio Certificates or Individual's Registration.

(1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the holder if:

(a) The cabinet or the local or district health department has reason to believe that an imminent public health hazard exists;

(b) The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c) An inspection of a studio reveals a rating score of less than sixty (60).

(2) The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference~~[hearing]~~ in accordance with 902 KAR 1:400.

(3) The cabinet or the local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference~~[hearing]~~ is requested.

~~[(4) A person whose studio certificate or individual registration has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the certification or registration.]~~

Section 17. Revocation of a Studio Certificate or an Individual's Registration.

(1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio certificate~~[certification]~~ or registration is subject to revocation and

advising that the studio certificate~~[certification]~~ or registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference~~[hearing]~~ is filed with the cabinet by the certificate~~[certification]~~ or registration holder within the ten (10) day period.

(3) A studio certificate~~[certification]~~ or individual registration may be suspended for cause pending its revocation or an administrative hearing relative to the revocation.

~~Section 18. [Appeals. A certificate or registration holder or an applicant aggrieved by a decision of the cabinet or the local or district health department may request an administrative hearing in accordance with 902 KAR 1:400.~~

~~Section 19.] Incorporation by Reference.~~

(1) DFS-253, "Limited Ear Piercing Studio Inspection Report", Rev. 01/23~~[2/19]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Public~~[Food]~~ Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or at <https://www.chfs.ky.gov/agencies/dph/dafm/Pages/lhddocuments.aspx?View=All&Title=Forms%20and%20Documents&Page=1>.

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Policy

(As Amended at ARRS, December 11, 2023)

907 KAR 3:310. Community Health Worker services and reimbursement.

RELATES TO: KRS 309.460~~], 309.462,]~~309.464, 369.101-369.120

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) requires, 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" is defined by~~[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":

(a) Means a treatment, procedure, or other action taken to prevent or treat disease, or improve health in other ways; and,

(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";

(a) Means a provider listed or permitted to employ a certified community health worker pursuant to KRS 205.648(2); and

(b)

1. Includes 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 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;**and**

(5) Provide services as approved by an ordering provider who is associated with a sponsoring provider; **and**

(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) **(e)(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) **(f)** 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 **not** be **(no)** reimbursement under this administrative regulation available for a certified community health worker **(that is directly)**:

(1) **(If/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 **may** **(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.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, December 11, 2023)

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, 230.826, 309.080(2), 309.083, 309.0832, 309.130(2), (3), 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(2) 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; ~~and, 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. 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. This administrative regulation establishes the standards for the types of agencies, groups, organizations, and persons eligible to receive funding ~~from the Kentucky problem gambling assistance account~~, 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 ~~through [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 in accordance with [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 in accordance with [as defined by] KRS 309.083.

(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.

~~(5) [(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 ~~shall be [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; ~~or~~

(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 participating in the Center for Medicaid or Medicare Services Section 223 CCBHC Demonstration.

(2) A Kentucky Gambling Assistance Application shall only be filed for the purpose of requesting funds for [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; ~~or~~

(e) Paying the costs associated with the treatment of addictions.

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:

(1) [(a)] In writing to 275 East Main Street, mail-stop 4W-G, Frankfort, Kentucky 40621; or

(2) [(b)] Via electronic mail to

kyproblemgamblingassistance@ky.gov.

7091; email CHFSregs@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; ~~and~~.

(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 ~~or~~ 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 ~~through a certifying organization~~;

(d) Complete ~~one hundred (100)~~~~fifty (50)~~ direct contact hours addressing the issues, prevention, and early intervention, co-occurring and ~~under what conditions~~~~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 ~~a consultant approved through an approved consultant from~~ the certifying ~~organization's~~~~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 ~~applicable~~ 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 ~~Web site~~~~website~~:

~~(1)(a)~~ Certified treatment providers for individuals experiencing the consequences of problem gambling; and

~~(2)(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~~~~Website~~ at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amended After Comments)

201 KAR 36:005. Definitions for 201 KAR Chapter 36.

RELATES TO: KRS 335.500, 335.535(1)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the definitions used in 201 KAR Chapter 36.

Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course relevant to the practice of professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "~~Chair~~["~~Chairman~~"] means the chair[~~chairman~~] or vice-chair[~~vice-chairman~~] of the board.

(4) "Charge" means a specific allegation contained in a formal complaint, as established in 201 KAR 36:050, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(5) "Client" means:

(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;

(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or

(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(6) "Complaint" means any written allegation of misconduct by a credentialed individual or other person, which might constitute a violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder.

(7) "Complaint screening committee" means a committee that:

(a) Consists of three (3) persons appointed by the chairman of the board and may include the executive director or another staff member; and

(b) Reviews complaints and investigative reports, opens investigations, participates in informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take criminal or civil action.

(8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(9) "Distance counseling" means the practice of professional counseling as defined by KRS 335.500(5) between the professional counselor and the client[~~patient~~]:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(10) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, or drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio or video recordings;

(h) Correspondence;

(i) Electronic mail; or

(j) Drawings or blueprints; and

(k) Client treatment documentation.

(11) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.

(12) "Face-to-face" means supervision that is in person where the supervisor and supervisee are physically present in the same room or through interactive, simultaneous video and audio media.

(13) "Formal complaint" means a formal administrative pleading authorized by the board, which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(14) [~~"Good moral character"~~] means a licensee or applicant who has not been:

(a) ~~Convicted, in a court of competent jurisdiction, of any crime involving a substantial misrepresentation of any material fact, including any of the following:~~

1. ~~Bribery or corrupt influences under KRS Chapter 521;~~

2. ~~Forgery or related offenses under KRS Chapter 516;~~

3. ~~Business or commercial frauds under KRS Chapter 517;~~

4. ~~Perjury or related offenses under KRS Chapter 523;~~

5. ~~Abuse of a public office under KRS Chapter 522; or~~

6. ~~Miscellaneous crimes affecting businesses, occupations, and professions that have a direct financial or adverse impact on business;~~

(b) ~~Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter 507 or 507A;~~

(c) ~~Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving the following:~~

1. ~~Sexual offenses under KRS Chapter 510;~~

2. ~~Pornography under KRS Chapter 534;~~

3. ~~Theft and related offenses under KRS Chapter 514;~~

4. ~~Prostitution offenses under KRS Chapter 529; or~~

5. ~~Family offenses under KRS Chapter 530;~~

(d) ~~Convicted, in a court of competent jurisdiction, of any felony involving the following:~~

1. ~~Assault or related offenses under KRS Chapter 508;~~

2. ~~Kidnapping or related offenses under KRS Chapter 509;~~

3. ~~Burglary or related offenses under KRS Chapter 511;~~

4. ~~Criminal damage to property under KRS Chapter 512; or~~

5. ~~Arson and related offenses under KRS Chapter 513;~~

(e) ~~Found to have a behavioral or substance abuse problem, which may endanger or impair the health, personal safety, or welfare of a client;~~

(f) ~~Found to be a delinquent taxpayer as defined by KRS 131.1817(1)(b);~~

(g) ~~Convicted, in a court of competent jurisdiction, of three (3) or more offenses of driving under the influence or driving while impaired;~~

(h) ~~Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS Chapter 218A;~~

(i) ~~Convicted, in a court of competent jurisdiction, of any criminal offense similar to the convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law of the state where the conviction occurred; or~~

(j) ~~Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a registration, certification, or license issued by the issuing body.]~~

[(15)](14) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

[(15)](14) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

[(16)](17) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint[~~or an investigator employed by the Attorney General or the board~~].

[(17)](18) "Professional counselor" means a licensed professional clinical counselor as defined by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

[(18)](19) "Program" means an organized learning experience:

(a) Planned and evaluated to meet learning~~[behavioral]~~ objectives; and

(b) Presented in one (1) session or a series.

~~(19)~~~~(20)~~ "Relevant" means having content applicable to the practice of professional counseling.

~~(20)~~~~(24)~~ "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity who is subject to a charge or formal complaint.

~~(21)~~~~(22)~~ "Scope of practice for professional counseling" means:

(a) The independent practice of counseling encompassing the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, or ethics;

(b) Counseling to promote mental health wellness, which includes the achievement of social, career, and emotional development across the lifespan, as well as preventing and treating mental disorders and providing crisis intervention;

(c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of assessments, tests and appraisals; referral; or the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders;

(d) Counseling that encompasses consultation and program evaluation, program administration within and to schools and organizations, and training and supervision of interns, trainees, and pre-licensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision; or

(e) The functions or practices that are within the professional counselor's training or education.

(22) "Student" means an individual taking coursework in a counselor education program governed by a team of credentialed instructors who will maintain a student and professor relationship during student's enrollment period.

(23) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(24) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(25) "Supervisor" means an individual designated as a licensed professional clinical counselor supervisor in accordance with 201 KAR 36:065~~[a member of a mental health or behavioral services profession listed in 201 KAR 36:065]~~ who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

(26) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with 201 KAR 36:060, Section 2.

(27) "Testing and assessment services" means an educational, mental health, clinical, and career assessment to gather information regarding the client for a variety of purposes, including client decision making, treatment planning, and forensic proceedings. Assessment may include both qualitative and quantitative methodologies.

DR. HANNAH COYT, Board Chair

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 13, 2023 at 3:30 p.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 36

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 36.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 36

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 36.

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

(a) How the amendment will change this existing administrative regulation: The amendment will make terms gender neutral, clarify terminology, add items to the definition of "document", strike the definition of "good moral character", add the definition of "student" and clarify the definition of "supervisor".

(b) The necessity of the amendment to this administrative regulation is to clarify the definitions and allow for the common usage of "good moral character" when determining the fitness of an applicant for licensure, renewal or reinstatement and unrestricted usage of the term as opposed to the current restriction of applying the term to criminal behavior only.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make needed clarification to the definitions for regulations and allow the board to use the term "good moral character" as it was intended for purposes of determining an applicant's eligibility for the profession.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by the renewal, late renewal, and reinstatement fees. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1.) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2.) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3).

(3.) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with the amendment.

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

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

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

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amended After Comments)

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e), 5(a)
STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. KRS 335.525(5)(a) requires a

licensed professional counselor associate to maintain ongoing supervision as approved by the board. This administrative regulation establishes the qualifications of a supervisor and establishes the roles and responsibilities of the supervisor.

Section 1. Supervisor Qualifications.

(1) To be a supervisor of a licensed professional clinical counselor under discipline or a licensed professional counselor associate, an applicant shall:

(a) Submit a LPCC-S Application with supporting documentation that includes one (1) of the following:

1. A certificate or certificates documenting the completion of~~from the~~ fifteen (15) hours~~hour~~ in a board-approved CEU course on supervision; or

2. ~~Two (2) years of board-approved supervision agreements to support the five (5) years of experience as a licensed professional clinical counselor supervisor; or~~

3. ~~A copy of the transcript~~the syllabus as proof of completion of a supervision course in a graduate program;

(b) Be licensed by the board as a licensed professional clinical counselor;

(c) Not have:

1. An unresolved complaint that has been:

a. Reviewed by the complaints screening committee and referred for investigation; or~~citation]~~

b. Filed~~filed~~ against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate; ~~or~~

3. Been under discipline by the board within the last two (2) years preceding the application; or

4. ~~[3.] An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;~~

(d) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(e) If coming from another state:

1. Show proof of supervisory status in the other state;

2. Take a three (3) hour board-approved training on Kentucky law; and

3. Not have an order from the board of another state prohibiting the applicant from providing supervision.~~[Have taught or completed a:~~

1. ~~Three (3) hour graduate level course in counseling supervision; or~~

2. ~~Fifteen (15) hour board-approved supervisor training course].~~

(2) ~~Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(e) of this section.~~

~~[(3)] A three (3) hour graduate level course exclusively on counseling supervision or the board-approved supervisor training course shall:~~

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and

multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) The board-approved supervisor training course shall be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(3) Nothing in this section shall preclude the board from considering information provided by the applicant warranting the issuance of the supervisor designation.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than nine (9)~~six (6)~~~~twelve (12)~~ persons obtaining experience for licensure at the same time. Any supervisor with more than nine (9) supervisees on or before April 1, 2024, shall reduce the number of supervisees to nine (9) or less through attrition and shall not accept new supervisees until such time as the supervisor has fewer than nine (9) supervisees of record.

Section 3. A supervisor who is placed under discipline shall be ineligible to act as a supervisor and shall not become eligible to apply for reinstatement as a supervisor no earlier than two (2) years following the completion of any disciplinary action, including completion of any suspension or probationary period. Further, a board-approved supervision training shall be required prior to reinstatement.

Section 4. Incorporation by Reference.

(1) "LPCC-S Application", DPL-LPC-03, July 2023~~[September 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero St~~[914 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00~~[4:30]~~ p.m. This material is also available on the board's website at <https://lpc.ky.gov>.

DR. HANNAH COYT, Board Chair

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 13, 2023 at 3:30 p.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be a board-approved supervisor.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for board-approved supervisors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board approved supervisor

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

(a) How the amendment will change this existing administrative regulation: The amendment strikes language that allowed grandfathering of pre-existing supervision agreements with other professional credential holders since time has expired for grandfathering; clarifies requirements to qualify as a supervisor and strikes redundant language; clarifies the supervisor applicant have no unresolved complaints versus citation and adds a two-year restriction to supervision following any discipline; and provides clarification on the requirements for out-of-state supervisory applicants, including removal of the requirement for a graduate and supervisory training courses and strikes the grandfather provision since the time it would apply for has lapsed; reduces the maximum number of supervisees from twelve (12) to nine (9); and includes new provisions regarding supervisors under discipline.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the educational and experiential requirements for supervisory qualification; establish parameters and restrictions for supervisor status for licensees who are disciplined which has recently been problematic; and reduce the number of licensees a supervisor may supervise to ensure competency of services, prevent burnout and to protect the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the board's delegated authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists by clarifying the process for becoming a designated supervisor, the requirements of a graduate-level course to becoming a designated supervisor, reducing the number of supervisees to a more manageable number in order to ensure competency, avoid burnout and protect the public, and establishing standards and restrictions on supervisory qualification or status during and after discipline to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 4017 active and 56 inactive licensees who may be affected by the amendments in some capacity, as well as any new applicants for licensure. Presently, there are 2692 active licensed professional clinical counselors (LPCCs) of which 1055 has a supervisor credential and 531 are actively supervising. There are 1325 active licensed professional clinical counselor associates (LPCAs) under supervision who will be directly affected by these amendments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require supervisors with more than nine (9) supervisees to reduce the number of supervisees they supervise through attrition. Therefore, the supervisors will not be required to terminate supervision agreements for any number over nine (9) at this time, but if a supervision agreement is terminated for any reason, the supervisor shall not enter into a new supervision agreement with a supervisee until such time as the supervisor has fewer than nine (9) supervisees. There are now eight (8) supervisors who have more than nine (9) supervisees and who will eventually be affected by this change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost/fee associated with the amendments. However,

any reduction in the number of supervisees by a supervisor will result in an overall loss of income based on a reduced number of supervision affect 2.9% of all licensees with the supervisory credential and 5.8% of those who are active supervisors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and a board-approved supervisor, that licensees needing supervision are not being supervised by someone who is or has recently been under discipline, and that a supervisor does not have too many supervisees to ensure competency, avoid burnout and protect the public protect.

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

(a) Initially: No costs by the administrative body will be incurred to implement these changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1.) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2.) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3), and (5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? 5.8% of those who are active supervisors have more than six (6) supervisees and will be required to terminate some of their supervision agreements. However, the cost is indeterminable. Some supervision

services are pro bono and the fee varies since some have a sliding scale depending on the supervisee's work status (employer-paid supervision versus supervisee-paid).

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): None

Expenditures (+/-): Indeterminable

Other Explanation: Some supervision services are pro bono and the fee varies since some have a sliding scale depending on the supervisee's work status (employer-paid supervision versus supervisee-paid).

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amended After Comments)

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

RELATES TO: KRS 335.535

STATUTORY AUTHORITY: KRS 335.515(1), (3), (6), 335.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(6) and KRS 335.535 require the holder of a license to renew that license annually. This administrative regulation establishes the requirements for renewal, late renewal, and reinstatement of a license.

Section 1.

(1) A license shall be renewed by October 31 of each year.

(2) A person receiving an initial license within 120 days prior to the renewal date shall not be required to renew until October 31 of the following year.

Section 2.

(1) To apply for renewal, a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(a), for the renewal of a license.

(2) After the sixty (60) day grace period, in order to apply for reinstatement, an individual who has a terminated license as a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Reinstatement Application;

(b) Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year prior to[ef] the filing of an application for reinstatement;

(c) Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36 within one (1) year prior to[ef] the filing of an application for reinstatement;

(d) Submit a[~~background check performed within the last ninety (90) days by the Kentucky State Police and a~~] criminal background check performed by the Federal Bureau of Investigation;

(e) Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(a); and

(f) Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(a).

Section 3.

(1) To apply for renewal, a licensed professional counselor associate shall:

(a) Submit a completed LPCA Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(b), for the renewal of a license.

(2)

(a) After the sixty (60) day grace period or revocation of a license, in order to apply for reinstatement, an individual who has a terminated license as a professional clinical counselor associate shall:

1. Submit a completed LPCA Reinstatement Application;

2. Submit a criminal background check performed within the last ninety (90) days by the ~~[Kentucky State Police and a criminal background check performed by the]~~ Federal Bureau of Investigation;

3. Submit proof of completing ten (10) hours of board-approved continuing education completed within one (1) year of the filing for reinstatement;

4. Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS 335.500 to 335.599 and 201 KAR Chapter 36, within one (1) year of the filing for reinstatement;

5. Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(b); and

6. Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(b).

(b) A person who applies for reinstatement within three (3) years of termination or revocation of the license shall be required to meet current continuing education requirements established in 201 KAR 36:030.

(c) A person who fails to apply for reinstatement within three (3) years of termination or revocation of the license shall meet the current licensure requirements.

Section 4.

(1) A person shall not engage in the practice of professional counseling after a license has been terminated.

(2) The ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement shall not count towards the applicant's continuing education requirement under 201 KAR 36:030, Section 1(1).

(3) If a supervisor fails to verify the hours required for a licensed professional counselor associate by the termination date of the license, then the LPCA Supervision Agreement, as incorporated by reference in 201 KAR 36:060, shall be terminated.

Section 5.

(1) A licensee for renewal or applicant for reinstatement shall maintain good moral character.

(2) If an applicant lacks good moral character and the incident that resulted in the lack of good moral character occurred since issuance of the initial license or last renewal date, the applicant has the duty to provide available evidence relative of rehabilitation.

(3) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(4) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "LPCC Renewal Application", DPL-LPC-07, July 2023[February 2017];

(b) "LPCA Renewal Application", DPL-LPC-08, July 2023[February 2017];

(c) "LPCC Reinstatement Application", DPL-LPC-09, July 2023[February 2017]; and

(d) "LPCA Reinstatement Application", DPL-LPC-10, July 2023[February 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 500 Mero Street~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to ~~4:00~~4:30 p.m. This material may also be found on the board's website at lpc@ky.gov.

DR. HANNAH COYT; Board Chair

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 13, 2023 at 3:30 p.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to inform a licensee of the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the renewal, reinstatement, and reactivation of a license

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes some housekeeping clarifications and amends the background check to be conducted solely by the FBI since it is a comprehensive check that includes a statewide criminal history.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to streamline the application process, reduce steps and costs to the applicant, and for efficiency in administration.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expedite the application process by using the most efficient, national resource and create more efficient administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 4017 active and 56 inactive licensees who will be affected by this administrative regulation in some capacity. The board reviews approximately 800 to 1000 applications annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments. However, the existing costs may be reduced due to one fewer background check being required under certain circumstances.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for a background check for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no new fee.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1.) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2.) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), 335.525(6), and 335.535.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? If an applicant is required to obtain a background check for reinstatement, a savings of \$20 will be realized due to the removal of the KSP background check.

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

(c) How much will it cost the regulated entities for the first year? The cost of renewal or reinstatement plus the cost of the record check, if required.

(d) How much will it cost the regulated entities for subsequent years? Renewal costs are annual. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): If a background check is required for reinstatement, the cost is \$20 less due to the removal of the KSP background check requirement.

Expenditures (+/-):

Other Explanation:

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

BOARDS AND COMMISSIONS

Board of Licensed Professional Counselors (Amended After Comments)

201 KAR 36:090. Administrative hearings for denials and revocation of probation~~[probated sanction]~~[probation].

RELATES TO: KRS 335.515(3), (4), 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

NECESSITY, FUNCTION AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(4) requires the board to conduct administrative hearings as necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures for an individual to request an administrative hearing from the denial of or refusal to renew or reinstate a license, or revocation of a probated sanction.

Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstate a License.

(1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process and that was considered as part of the denial of the application.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 2. Revocation of Probation~~[Probated Sanction]~~[Probation].

(1) If the board moves to revoke probation~~[a probated sanction]~~[probation], the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The notification shall be sent to the last known address on file with the board for the

certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the revocation shall be effective upon the expiration date for the certificate holder to request an appeal.

Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 500 Mero Street~~[944 Leewood Drive]~~, Frankfort, Kentucky 40601.

Section 4. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees may~~[shall]~~ be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

DR. HANNAH COYT; Board Chair

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 13, 2023 at 3:30 p.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish due process procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 335.515(3) which authorizes the board to promulgate regulations the denial, renewal, reinstatement, and revocation of a probation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes application of a fine discretionary and contains a technical amendment to correct the physical address of the Board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make imposition of a fine discretionary and to make a technical correction to the address of the Board.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: Licensees will understand the term probation in the context of board discipline, clarify the board's discretion in imposing fines and have the current physical address of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 4017 active and 56 inactive licensees who may be affected by the terminology relating to probated sanctions and the physical address of the board, and also any member of the public who may have redress over the actions or inactions of licensees of the board who will know the physical location of the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Stakeholders will know the current location of the Board.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no new fee.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

(1.) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

(2.) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), (4), (7)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

the administrative regulation is to be in effect.

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

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

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation:

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

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

16 KAR 4:020. Certification requirements for teachers of exceptional children.

RELATES TO: KRS 157.200, 157.250, 161.020, 161.028(1), 161.030, 20 U.S.C. 1412; 34 C.F.R. 300.156

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.028 require the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate for all public-school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel.

(1) In accordance with Chapter 2 of Title 16 of the Kentucky Administrative Regulations, the EPSB shall issue certificates for teaching exceptional children with one (1) or more of the disabilities defined in 34 C.F.R. 300.8 and 707 KAR 1:002.

(2) A teacher holding the following certification shall be assigned to serve students with moderate and severe disabilities at any grade level: Certification for Teaching Exceptional Children – Moderate and Severe Disabilities, Grades Primary through 12.

(3) A teacher holding the following certification shall be assigned to serve students with learning and behavior disorders:

(a) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades 8 through 12; or

(b) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades Primary through 12.

(4) A teacher holding the following certification shall be assigned to serve students with visual impairments at any grade level: Certification for Teaching Exceptional Children – Visually Impaired, Grades Primary through 12.

(5) A teacher holding the following certification shall be assigned to serve students with hearing impairments at any grade level:

(a) Certification for Teaching Exceptional Children – Hearing Impaired, Grades Primary through 12; or

(b) Certification for Teaching Exceptional Children – Hearing Impaired with Sign Proficiency, Grades Primary through 12.

(6) A teacher holding the following certification shall be assigned to serve students with speech and language and communications disorders: Certification for Teaching Exceptional Children – Communication Disorders, Grades Primary through 12.

(7) A teacher holding the following certification shall be assigned to serve students with orientation and mobility disabilities: Certification for Teaching Exceptional Children – Orientation and Mobility Specialist.

Section 2. [Waiver]-Requests for Program Teacher Assignment.

(1) Local school districts which need to assign teachers to teach exceptional classes or students, with the exception of students receiving services for communication disorders, not consistent with the teacher's certification for teaching exceptional children shall request approval~~[a waiver]~~ for the program teacher assignment through the Kentucky Department of Education's (KDE) Office of Special Education and Early Learning and ~~[be approved by]~~ the EPSB.

(2) The EPSB and KDE shall give consideration for this approval based on information provided by the local school district in its request. The request shall include:

(a) The teacher's name, school assignment, certificate number, class plan assignment, and current certification;

(b) A listing of pupils currently served by category of exceptionality;

(c) A listing of pupils the district is requesting to be served by exceptionality; and

(d) Any other relevant information which the district wishes to have considered in the decision-making process.

(3) Following consideration by the KDE and ~~[approval by]~~the EPSB, the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 15, 2023 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 28, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for teachers of exceptional children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for teachers of exceptional children and the procedures for requesting a program teacher assignment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. This administrative regulation establishes the certification requirements for teachers of exceptional children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the assignment of special education personnel and sets the procedures for requesting program teacher assignments.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the terminology in Section 2 of the regulation to more adequately reflect the process of program teacher assignments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary remove the term waiver

which does not apply to the program teacher assignment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment removes inaccurate terminology and reflects the correct name of the program teacher assignment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the terminology in Section 2 of the regulation to more adequately reflect the process of program teacher assignments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts and educators seeking the program teacher assignment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions from the regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in approval of the requested program teacher assignment.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all districts and teachers seeking the program teacher assignment.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The EPSB and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028.

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

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

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

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

(d) How much will it cost to administer this program for

subsequent years? There are no additional costs expected with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The EPSB is not imposing or collecting any fees under this administrative regulation. The process for program teacher assignments is already established, and no additional costs to that process are established by this amendment.

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

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

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

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (Amendment)

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505, 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510, 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.590, 61.637(18), 78.5540(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) requires the Kentucky Public Pensions Authority to promulgate administrative regulations to implement the requirements of KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees

Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions.

(1) "Bona fide separation from service" means:

(a) A cessation of the employment relationship between the member and the member's employer; and

(b) There is no prearranged agreement.["Agency" means:

(a) Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and

(b) Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.]

(2) "Employee" means a retired member who is performing services for an employer in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service.

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

(4) "File" means a form has been received at the retirement office by mail, fax, secure email, in-person delivery, or upload via Self Service on the Web site maintained by the agency (if available).

(5) "Fiscal Year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(6) "Hazardous position" is defined by KRS 78.510(42).

(7) "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

(8) "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

(9) "Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).

(10) "Non-participating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.

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

(4) [(42)] "Participating position" means a regular full-time position or a regular full-time officer position.

(5) "Prearranged agreement" means a verbal or written, explicit or implicit agreement:

(a) Between the retired member and his or her employer for the retired member to reemploy with the employer within twelve (12) months after the retired member's effective retirement date; and

(b) That occurred prior to the retired member's effective retirement date.

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

(14) "Regular full-time officer position" is defined by KRS 16.505(22).

(15) "Regular full-time position" is defined by KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16).

(16) "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]

(6) [(47)] "Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545(4).

[(18) "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

(19) "School board" is defined by KRS 78.510(4).

(20) "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

(21) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(22) "Volunteer" is defined by KRS 61.510(42) and 78.510(39).]

Section 2. Form 6000 Certification.

(1) In order to retire with the systems[~~operated by the agency~~], an eligible member shall complete and file a valid[submit a] Form 6000, Notification of Retirement, which[as incorporated by reference in 105 KAR 1:200. The Form 6000, Notification of Retirement,] shall comply with the requirements of KRS 61.590, KRS 78.545, and 105 KAR 1:200.

(2) The agency shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, shall have:

(a) A bona fide separation from service[~~as provided in subsection (2) of this section~~]; and

(b) A break in service as provided in subsection (3) of this section.

(2) (a) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions shall not have a prearranged agreement.["Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.

(b) "Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) months after the member's retirement date.]

(b) [(c)] An elected official who is reelected and takes office in the same elected position as he or she held prior to retirement within twelve (12) months after his or her effective retirement date shall be deemed to have a prearranged agreement. [official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of retirement, the official is reelected and takes office in the same position as the elected official held prior to retirement.]

(3) "Break in service" as provided in this section shall require that:

(a) For effective retirement dates prior to January 1, 2024:

1. A member who retired from a hazardous position shall have a one (1) month break in service before returning to work with any participating employer in a regular full-time hazardous participating position.

2. [(b)] Except as provided in subparagraph 1. of this paragraph[paragraph(a) of this subsection], a member who retired from a hazardous or nonhazardous position shall have a three (3) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(b) For effective retirement dates beginning January 1, 2024, a member who retired from a hazardous or nonhazardous position shall have a one (1) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(4) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her retirement date, then the following shall be filed[at the retirement office]:

(a) A valid Form 6751, Employer Certification Regarding Reemployment, completed by the[The] participating employer, which shall certify that there was no prearranged agreement[on a completed Form 6751, Employer Certification Regarding Reemployment];

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(5) (a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and additional requested information.

(b) If the agency determines that the retired member failed to comply with any of the requirements of this section or federal

~~law~~ have a bona fide separation from service or a break in service and returned to work with any participating employer in any position, including a participating position or a non-participating position, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and hospital and medical insurance~~health~~ plan premiums paid by the systems.

Section 4. Independent Contractors and Leased Employees.

(1) If a retired member seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee within twelve (12) months of the retired member's retirement date, then the following shall be filed ~~at the retirement office~~:

(a) A valid Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member;

(c) A complete copy of any contract under which services are provided by the retired member to the participating employer; and

(d) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(9) and 78.5540(2)(b).

(2) The agency shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer.

(3)(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the agency determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity:

1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall do the following:

a. Report the retired member as required by KRS 61.675, KRS 78.625, and 105 KAR 1:145;

b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c. Reimburse the systems for the cost of hospital and medical~~health~~ insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 5. Volunteers.

(1) If a retired member seeks to volunteer with a participating employer within twelve (12) months of the retired member's retirement date, then the following shall be filed ~~at the retirement office~~:

(a) A valid Form 6753, Employer Certification of Volunteer, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(2)(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the Agency determines that the retired member is an employee of the participating employer, rather than a volunteer:

1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall do the following:

a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:145;

b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c. Reimburse the systems for the cost of hospital and medical~~health~~ insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is a volunteer, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 6. Hospital and Medical~~Health~~ Insurance Plan Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) If a retired member is reemployed by multiple participating employers in a month in two (2) or more~~positions that qualify as~~ regular full-time positions, one (1) regular full-time position and one or more part-time positions pursuant to KRS 61.680(6) and 78.545, or multiple part-time positions pursuant to KRS 61.680(6) and 78.545, then:

(a) Each~~each~~ participating employer shall be responsible for reimbursing the systems for a portion of the hospital and medical~~health~~ insurance plan premium paid by the systems to provide coverage for the retired member for that month; and

(b) The portion shall be~~that is~~ equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of hospital and medical~~health~~ insurance plan premiums.

(3)~~(2)~~ Participating employers that are exempt from reimbursement of hospital and medical~~health~~ insurance plan premiums under

Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) calendar days or less during the fiscal year, are not responsible for hospital and medical~~health~~ insurance plan premiums under this section.

Section 7. Exemption for Payment Of Employer Contributions and Reimbursement of Hospital and Medical~~Health~~ Insurance Plan Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical~~health~~ insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a valid~~completed~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file ~~at the retirement office~~ prior to the start of the retired member's term of appointment.

(b) If a valid~~completed~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file ~~at the retirement office~~ prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~health~~ insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid~~completed~~ Form 6760 and supporting documentation are on file ~~at the retirement office~~.

(3)~~(2)~~(a) For each subsequent term of reappointment after the initial term of appointment listed on the valid~~completed~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, described in subsection (1) of this section, the participating employer

shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a valid[completed] Form 6764, Recertification of Retired Police Officer, is on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid[completed] Form 6764, Recertification of Retired Police Officer, is not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid[completed] Form 6764 and supporting documentation are on file ~~[at the retirement office]~~.

(4)(3)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid[completed] Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid[completed] Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the month after a valid[completed] Form 6766 and supporting documentation are on file ~~[at the retirement office]~~.

(5)(4)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid[completed] Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid[completed] Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the month after a valid[completed] Form 6767 and supporting documentation are on file ~~[at the retirement office]~~.

(6)(5)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a valid[completed] Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid[completed] Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term

appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the month after a valid[completed] Form 6768 and supporting documentation are on file ~~[at the retirement office]~~.

(7)(6) A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of hospital and medical[health] insurance plan premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file ~~[at the retirement office]~~.

(8)(7)(a) A participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file ~~[at the retirement office]~~ shall be exempt from paying employer contributions and from reimbursing the systems for the costs of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a valid[completed] Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid[completed] Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file ~~[at the retirement office]~~ shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the month after a valid[completed] Form 6770 and supporting documentation are on file ~~[at the retirement office]~~.

(9)(8)(a) For each ~~[Each]~~ subsequent term of reappointment after the initial term of appointment listed on the valid[completed] Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a valid[completed] Form 6774, City Recertification of Retired Police Officer, is on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid[completed] Form 6774, City Recertification of Retired Police Officer, is not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the month after a valid[completed] Form 6774 is on file ~~[at the retirement office]~~.

(10) If the appropriate form and as indicated in this subsection is not on file, the employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", June 2023;

(b) Form 6751, "Employer Certification Regarding Reemployment[.]", December 2023[March 2022];

(c)(b) Form 6752, "Employer Certification of Independent Contractor/Leased Employee[.]", December 2023[April 2021];

(d)(e) Form 6753, "Employer Certification of Volunteer[.]", December 2023[April 2021];

(e)(d) Form 6754, "Member Reemployment Certification[.]", December 2023[April 2021];

(f)(e) Form 6760, "County Police or Sheriff Appointment of

Retired Police Officer[.]", December 2023[March 2022];
 (g)[(f)] Form 6764, "Recertification of Retired Police Officer[.]", December 2023[June 2019];
 (h)[(g)] Form 6766, "Appointment of Retired School Resource Officer[.]", December 2023[March 2022];
 (i)[(h)] Form 6767, "Appointment of Kentucky State Police School Resource Officer[.]", December 2023[March 2022];
 (j)[(i)] Form 6768, "Postsecondary Institution Appointment of Retired Police Officer[.]", December 2023[March 2022];
 (k)[(j)] Form 6769, "Certification of Employed Police Officers Calendar Year 2015[.]", December 2023[July 2016];
 (l)[(k)] Form 6770, "City Appointment of Retired Police Officer[.]", December 2023[March 2022];
 (m)[(l)] Form 6774, "City Recertification of Retired Police Officer[.]", December 2023[July 2016]; and
 (n)[(m)] Internal Revenue Service Publication 1779, "Independent Contractor or Employee[.]", March 2012.
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the Authority's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: December 6, 2023

FILED WITH LRC: December 7, 2023 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on February 21, 2024 at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than 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 until February 29, 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to work with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to maintain the qualified tax status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions

established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the procedures and requirements for retired members and participating employers prior to the reemployment of a retired reemployed participant.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in accordance with KRS 61.637 and 78.5540. The regulation outlines certification and notification requirements of both retirees and participating employers.

(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 contains technical changes, changes to reflect legislative enactments (HB 506 – 2023), and form changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement make technical changes, changes to reflect legislative enactments (HB 506 – 2023), and form changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by outlining the processes and procedures for administration of retired reemployed requirements as authorized by KRS 61.505, 61.637, and 78.5540.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by outlining the processes and procedures for administration of retired reemployed requirements as authorized by KRS 61.505, 61.637, and 78.5540.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Retirees seeking reemployment with a participating employer within twelve (12) months of their initial retirement date, the Kentucky Public Pensions Authority, and employers participating in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be minimally impacted by these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Aside from some limited exceptions, the employer shall remit employer contributions on all creditable compensation earned by the employee during the period of reemployment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1. Moreover, compliance with this regulation will allow retired members to return to work with participating employers without the voiding of their retirement. Participating employers will be permitted to hire retired members.

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

(a) Initially: The Kentucky Public Pensions Authority is already administering KRS 61.637 and 78.5540 and no additional cost will arise from implementation of this amendment.

(b) On a continuing basis: The employer will be required to remit employer contributions on most retired members pursuant to KRS 61.637(17) and 78.5540.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers seeking to hire retired members are subject to the same processes and procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Public Pensions Authority and all participating employers in the Kentucky Employees Retirement System, State Police Retirement System, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 78.5540, and 26 U.S.C. 401(a).

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

(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? Ultimately, the cost to the Kentucky Public Pensions Authority should be negligible, as KRS 61.637 and 78.5540 are already being administered by the Kentucky Public Pensions Authority.

(d) How much will it cost to administer this program for subsequent years? Ultimately, the cost to the Kentucky Public Pensions Authority should be negligible, as KRS 61.637 and 78.5540 are already being administered by the Kentucky Public Pensions Authority.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Negligible.

Other Explanation: The cost of administering this amendment will be negligible for the KPPA. There should be no changes to costs for participating employers based on this amendment, or to revenue for the KPPA as a result of this amendment.

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

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

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

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-): None.

Expenditures (+/-): None.

Other Explanation: There should be no significant change to costs for the KPPA and participating employers.

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

GENERAL GOVERNMENT CABINET Department of Military Affairs (Amendment)

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990

STATUTORY AUTHORITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39E.210, 39E.990 and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11000 to 11050[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39E.210, 39E.990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), KRS 39E.040(6), and KRS 39E.080(4) requires the Kentucky Emergency Response Commission and the Division of Emergency Management to issue administrative regulations to implement KRS Chapter 39E and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11000 to 11050, governing the reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. This administrative regulation provides the procedure to assess, protest and appeal penalties provided for in KRS 39E.990[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), and 39E.210 require the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations governing the activities of the Kentucky Emergency Response Commission, including standards and procedures for the operations of the commission and local emergency planning committees, fee system, hazardous substance inventory and substance release reporting, emergency procedures and requirements, and establishment of warning and notification standards. This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990.]

Section 1. Definitions.

(1) "Compliance Review Board" means any current five (5) members of the Kentucky Emergency Response Commission, selected by the commission chairman, to review and issue findings, recommendations, and penalties regarding violations of KRS 39E.050, 39E.120, 39E.130, 39E.190, 39E.220, and 39E.990, and any administrative regulation promulgated, or order issued pursuant to KRS Chapter 39E.

(2) "Notice of Non-Compliance" means the notice sent to a facility owner or operator to inform them of a violation, or violations, of KRS 39E or KAR Title 106 and the penalties due and owed per KRS 39E.990.

Section 2. Notice of Non-Compliance.

(1) The commission chairman, or designee, shall mail a notice of non-compliance when the commission has notice of the existence of a violation of any provision of KRS 39E.050, 39E.080, 39E.120,

39E.130, 39E.190, 39E.220, or 39E.990, or any administrative regulation promulgated, or order issued pursuant to KRS Chapter 39E.

(2) The notice of non-compliance shall contain the specific date, time, and place of the violation, if applicable, and a summary of the factual, legal, or other grounds upon which the notice is based, including the applicable provision of KRS Chapter 39E or KAR Title 106.

(3) Upon receiving a notice of non-compliance, the facility owner or operator shall either:

(a) Agree to the violation cited in the notice of non-compliance and become compliant by remedying the violation, submitting payment for past due fees, and submitting payment penalties, within thirty (30) days of the date of the notice of non-compliance; or

(b) Disagree with the violation and penalty cited in the notice of non-compliance. If the facility owner or operator disagrees with the notice of non-compliance, they may file a protest per Section 3 of this administrative regulation.

(4) The commission may grant an extension of time for actions in subsection (3)(a) of this section, to extended beyond thirty (30) days, with the approval of the commission chairman, or designee.

Section 3. Protesting a Notice of Non-Compliance.

(1) If a facility owner or operator protests the notice of non-compliance, the protest shall:

(a) Be received by the commission within thirty (30) days from the date of the notice of non-compliance;

(b) Be in writing; and

(c) Contain a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the commission may grant an extension for filing the supporting statement if it determines the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested notice of non-compliance.

(2) If a protest meets the requirements of subsection (1) of this section, the facility owner or operator may waive or request a conference with the non-compliance review board.

(a) If a conference is requested, the compliance review board shall give notice of the conference date, place, and time to all affected persons. This notice shall be provided to the facility owner or operator at least twenty (20) days before the date of the conference.

(b) The conference may be held in person, or virtually, and per the Open Meeting Act requirements contained in KRS 61.800 to 61.850. The compliance review board shall give the facility owner or operator, and other affected persons, an opportunity to present a statement or evidence challenging the notice of non-compliance. The facility owner or operator may appear in person or by a designated representative.

(c) Further conferences may be held by mutual agreement.

Section 4. Findings and Recommendations and Final Decision.

(1) After considering the protest, including any matters presented at the final conference, the compliance review board shall issue findings and recommendations on any matter in controversy. These findings and recommendations shall be:

(a) In writing;

(b) Mailed to the facility owner or operator, and to all affected parties per Section 6 of this administrative regulation, within fourteen (14) days of issuance; and

(c) Mailed or transmitted to the chairman, or his designee, within fourteen (14) days of issuance.

(2) The commission shall approve or disapprove the findings and recommendations of the compliance review board and issue a final decision at the first scheduled and available commission meeting in which there is a quorum.

(3) The final decision shall be signed by the commission chairman, or a designee stating that it is a final decision of the commission, generally state the issue in controversy, the commission's position, and set forth the procedure for an appeal.

(4) The facility owner or operator shall have twenty (20) days after the final decision is signed, issued, and mailed via certified mail, to:

(a) Resolve the findings; or

(b) Appeal the commission's final decision per Section 5 of this administrative regulation by filing a request for an administrative hearing.

Section 5. Appeal of the Commission's Final Decision.

(1) The facility owner or operator shall request an administrative hearing by mailing such request to the commission chairman or designee within the time set forth in Section 4(4), of this administrative regulation.

(2) Upon receipt of the request, the commission chairman, or designee, shall request an administrative hearing officer for an administrative hearing. The administrative hearing will be held according to the procedures in KRS 13B.050.

Section 6. Service and Mailing of Documents.

(1) Service of documents by the commission, commission chairman or designee, or the compliance review board, shall be mailed by certified mail to the facility owner or operator at the address shown on the annual inventory report or facility plan required by KRS Chapter 39E. If no facility plans or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission, commission chairman or designee, or the compliance review board, by any party, shall be served by mail upon all other parties.[General Provisions.

(1) The commission shall commence an administrative action to impose a civil penalty under KRS 39E.990(3) against a person if the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990.

(2)(a) The commission chairman (or designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the violation, if applicable, together with a summary of the factual, legal, and other grounds upon which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990 or Title 106 KAR that were allegedly violated.

(b) Recitation of statutory or regulatory standards shall not be a sufficient summary of the grounds for the commission's action.

(3) The commission chairman (or designee) may attempt to informally resolve the violation. Informal resolution shall be in accordance with Section 3 of this administrative regulation.

(4) If, after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.

Section 2. Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party. Resolution shall be as established in this section.

(1) The commission shall give notice not less than twenty (20) days prior to an informal proceeding to all affected persons of the commission's notice of violation.

(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.

(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision.

Section 3. Parties. The parties to the proceeding shall be the commission chairman (or designee) and the alleged violator who shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060.

Section 4. Assignment to Hearing Officer; Duties and Authority.

(1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, the commission shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, and 401 KAR 100:010.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B, Title 106 KAR, 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, or 401 KAR 100:010, including, for example, the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law, and recommended orders for the agency head; and
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

Section 5. Continuances.

(1) Any party may request a continuance of a scheduled hearing for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from attending the hearing.

(a) The request shall be in writing and include the reason for the request.

(b) The request shall be submitted to the commission chairman (or designee) at least ten (10) days prior to the hearing date.

(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or designee) at least five (5) days prior to the scheduled hearing.

(3) The hearing officer shall rule on all requests for a continuance.

(a) In the hearing officer's absence, the commission chairman (or designee) shall rule on the requests.

(b) The commission chairman (or designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section 6. Conflict of Interest; Recusal.

(1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.

(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts that demonstrate one (1) or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order.

Section 7. Ex Parte Contact Prohibited.

(1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including deeming the person to have defaulted; striking all or part of that person's pleadings, claims, or defenses; denying any pending motions by the party; issuing a show cause order requiring the person to show why the hearing officer should not sanction the person; or taking such other actions as are appropriate pursuant to KRS Chapter 13B.

Section 8. Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

Section 9. Filing of Papers.

(1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or not less than twenty (20) days in advance of a hearing.

(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation.

(a) A party filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing a paper mail the original paper to the commission.

(b) The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be the date the commission received the facsimile.

(4) Papers may be filed electronically to email tier2kyem@gmail.com. Papers filed electronically via email shall include a certificate that the paper copy is being filed by email and the original paper is being filed by mail immediately after electronic submittal.

(5) All papers filed in an administrative action shall be signed by the filing person.

(a) The signature of the filing person or his or her authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose.

(b) If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper, and take any action allowed as a consequence of the failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing

in future administrative actions before the commission.

Section 10. Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law and the convenience of the parties, the witnesses, and the evidence.

Section 11. Default.

(1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his or her right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his or her right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.

(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.

(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from complying.

Section 12. Burden of Proof.

(1) The commission shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the commission's action.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

Section 13. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law, and issue a recommended order for review and approval by the full commission with service on all parties.

(1) Any party may take exception in writing within fifteen (15) days of mailing of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, approve the findings of fact, conclusions of law, and recommended order or may modify the findings of fact, conclusions of law and recommended order.

(2) If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law, within thirty (30) days, the order of the hearing officer shall be final.

Section 14.

(1) Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the address shown on the annual inventory report or facility plan required to be filed by KRS Chapter 39E. If no facility plan or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission by any party shall be served by mail upon all other parties.]

This is to certify that the Kentucky Emergency Response Commission approved this administrative regulation unanimously by

Motion #046-2023 on Wednesday, November 15, 2023. The director of the Division of Emergency Management concurs with this administrative regulation as required by KRS 39E.080.

DUSTIN HEISER, Interim Director

APPROVED BY AGENCY: December 14, 2023

FILED WITH LRC: December 15, 2023 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2024, at 9:00 a.m. Eastern Standard Time at 100 Minuteman Parkway, Bldg. 100, Room 238 (EOC 2nd Floor Conference Room) Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. KRS Chapter 39E reflects the federal requirements of the Emergency Planning and Community Right-to-Know Act of 1986. This administrative regulation provides the procedure to assess, protest and appeal penalties provided for in KRS 39E.990.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS 39E.040(6) and KRS 39E.080(4) that require the Kentucky Emergency Response Commission (KERC) and the Division of Emergency Management to issue administrative regulations to implement KRS Chapter 39 E and the Emergency Planning and Community Right-to-Know Act of 1986. This Act, known as Title III, governs the reporting requirements and procedures for individuals, businesses, and governmental agencies regarding the manufacture, use, storage, or transportation of hazardous substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39E.990 provides penalties for any person violating KRS Chapter 39E. KRS Chapter 39E provides standards for facility owners or operators that manufacture, use, store, or transport hazardous substances. This administrative regulation supports compliance with the requirements of KRS 39E.990 by providing the procedure for the Commission to assess penalties and notify applicable owners or operators of facilities of non-compliance. This administrative regulation also provides methods for protest and appeal of penalties associated with non-compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the penalty process and procedure that results from non-compliance with the statutes governing the storage, transport, or manufacture of hazardous substances.

(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: Provides a way to ensure compliance with the statutes

and gives facility owners or operators an opportunity to become compliant after a notice of a violation before resorting to an administrative hearing.

(b) The necessity of the amendment to this administrative regulation: There were errors and improper citations to sections within the regulation as well as inconsistencies regarding the trigger for administrative hearings.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation supports compliance with the requirements of KRS 39E.990 by providing the procedure for the commission to assess penalties and notify applicable owners or operators of facilities of non-compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will be clear and allow the facility owners or operators due process while also allowing a route to compliance, without an administrative hearing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, the Kentucky Emergency Response Commission (KERC) and individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

(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 overall requirements of the regulated entities will not change. This amendment will clarify options for Title II facilities to achieve compliance when given a notice of non-compliance. This will also allow the KERC to ensure greater compliance with KRS 39E with a more streamlined and simple penalty assessment and collection procedure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to these entities unless they incur a fee or penalty per KRS 39E.990.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will be notified of non-compliance and have an opportunity to become compliant before incurring greater fees or penalties.

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

(a) Initially: None. The Department of Military Affairs administratively supports the KERC and this will not require additional costs. KERC fees are obtained through the required Tier II facilities fees. Those fees, and any penalties collected, then fund the KERC operation and a grant for Local Emergency Planning Committees (LEPC).

(b) On a continuing basis: See (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KERC fees are obtained through the required Tier II facility fees. Those fees, and any penalties, fund the KERC operation and a grant for Local Emergency Planning Committees.

(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. The Department of Military Affairs currently administratively supports the KERC and will continue this support. This continuation will not require additional costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No. This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The "Emergency Planning and Community Right-To-Know Act of 1986" at 42 U.S.C. 11000-11050.

(2) State compliance standards. KRS Chapter 39E.

(3) Minimum or uniform standards contained in the federal mandate. Emergency Planning and Notification standards are located in 42 U.S.C. 11001. Substances and facilities covered and notification are located in 42 U.S.C. 11003.

Subtitle B, Sec. 311 (42 U.S.C. 11021) contains federal reporting requirements.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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 Military Affairs and local emergency management planning committees (LEPCs). LEPCs are most likely to become aware of facilities that are not complying with KRS Chapter 39E.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.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. None. The fund has already been established.

(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? Unknown. Unable to determine the number of penalties that may be collected. Penalties and fees which are collected are kept in a fund and used for the operation of the KERC and grants to the LEPCs that provide training, equipment, and planning.

(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? Unknown. See (3)(a) above.

(c) How much will it cost to administer this program for the first year? No additional cost will be incurred.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred.

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred if regulated entities comply with KRS Chapter 39E.

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred if regulated entities comply with KRS Chapter 39E.

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

regulation.

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

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 have no major economic impact.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources[department] to promulgate administrative regulations regarding the buying, selling, and transporting[to establish seasons for the taking] of fish and wildlife, the restriction of places where taking is permitted,[to regulate bag limits, creel limits, and methods of take,] and the application of administrative regulations to[to make these requirements apply to] a limited area or to the entire state. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. [Definitions.

(1) ~~"Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.~~

(2) ~~"Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.~~

(3) ~~"Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.~~

(4) ~~"Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.~~

(5) ~~"Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to harvest trophy catfish.~~

(6) ~~"Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.~~

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

(8) ~~"Roe-bearing Fish Buyer's Permit" means a permit issued by the department that entitles the permit holder to buy roe-bearing species or roe in accordance with this administrative regulation.~~

(9) ~~"Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species in accordance with this administrative regulation.~~

(10) ~~"Sport fish" means those species established in 301 KAR 1:060.~~

(11) ~~"Trophy catfish" means, for the area downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing, a:~~

(a) ~~Blue or flathead catfish that is a minimum of forty (40) inches in length; or~~

(b) ~~Channel catfish that is a minimum of thirty (30) inches in length.~~

(12) ~~"Unlicensed helper" means a person without a commercial~~

~~fishing license who is assisting a commercial fisherman.~~

(13) ~~"Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food processing plant prior to its sale at a roe-bearing fish buyer's facility.~~

Section 2.] Nonresident Commercial Fishing Licenses. A nonresident commercial fishing license shall only be issued to residents of states that offer nonresident fishing licenses to Kentucky residents, except that a nonresident with a valid 2013 Kentucky nonresident commercial fishing license shall be eligible to purchase a nonresident fishing license in subsequent license years, unless the nonresident fails to purchase the permit during any license year.

Section 2.[Section 3.] Unlicensed Helpers.

(1) A commercial fisher[fisherman] shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisher[fisherman] shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisher[fisherman] while using commercial fishing gear; and

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisher[fisherman] with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A commercial fisher[fisherman] whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisher[fisherman]; or

(b) Assist a licensed Kentucky commercial fisher[fisherman] in harvesting or transporting fish.

Section 3.[Section 4.] Tagging and Using Commercial Gear. A commercial fisher[fisherman] shall:

(1) Tag commercial fishing gear as established in[pursuant to] 301 KAR 1:146;

(2) Not use commercial fishing gear within:

(a) ~~[+]~~ Fifty (50) yards of the outlet or inlet of an overflow lake;[or]

b)[2-] Fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River; or[and]

c)[+] 200 yards of a dam, as established in KRS 150.445;

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley lakes[Lakes]; or

(b) Within 200 yards from the mouth of bays or inlets in Kentucky or Barkley lakes[Lakes]; and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

(a) Lost;

(b) Stolen; or

(c) Irretrievable due to unforeseen circumstances.

Section 4.[Section 5.] Special Catfish Harvest Restrictions.

(1) In all waters[the Ohio River and its tributaries] open to commercial fishing, except as established in subsection (2) of this Section, there shall be:

(a) An unlimited harvest of catfish less than trophy catfish size[:]

1. Blue and flathead catfish that are less than thirty-five (35) inches in length; and

2. Channel catfish that are less than twenty-eight (28) inches in length; and

(b) A daily limit of one (1) trophy catfish of each species[:]

1. Blue and flathead catfish greater than or equal to thirty-five (35) inches in length; and

2. Channel catfish greater than or equal to twenty-eight (28) inches in length].

(2) A person with a valid commercial license shall obtain from the department a free Lower Ohio River Trophy Catfish Harvest Permit in order to harvest Lower Ohio River Trophy Catfish in the mainstem Ohio River[multiple trophy catfish] downstream of Cannelton Lock and Dam.

(a) The department shall issue a maximum of fifteen (15) permits

annually.

(b) The department shall issue a permit to a commercial ~~fisher~~[fisherman] who:

1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River and its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and

2. Sends a written request to the department postmarked on or before March 10.

(c) A commercial ~~fisher~~[fisherman] may retain the rights to the permit each year, provided the requirements established in paragraph (2)(b) of this subsection are met.

(d) Each permit shall be issued in the order established in subparagraph 1. through 3. of this paragraph.

1. Retained permit requests;

2. A random electronic drawing for the remaining permit requests that are postmarked by March 10 of each year; and

3. First-come, first-served for any remaining permits.

(e) There shall be an unlimited daily harvest of catfish less than Lower Ohio River Trophy Catfish[trophy] size for each permit holder in the mainstem Ohio River downstream of Cannelton Lock and Dam.

(f) There shall be a daily ~~[ereel]~~limit of four (4) Lower Ohio River Trophy Catfish[trophy-catfish] in aggregate for each permit holder in the mainstem Ohio River downstream of Cannelton Lock and Dam.

(3) A Lower[An] Ohio River Trophy Catfish Harvest Permit holder shall not possess more than one (1) daily ~~[ereel]~~limit of Lower Ohio River Trophy Catfish[trophy-catfish] while on the water or trailering on a boat ramp.

(4) There shall be a maximum of two (2) daily ~~[ereel]~~limits of Lower Ohio River Trophy Catfish[trophy-catfish] possessed per boat while on the water or when trailering on a boat ramp if there is more than one (1) Lower Ohio River Trophy Catfish Harvest Permit holder in the boat.

(5) While on the water or trailering on a boat ramp, a commercial ~~fisher~~[fisherman] who does not possess a Lower[an] Ohio River Trophy Catfish Harvest Permit shall not possess more than one (1) daily ~~[ereel]~~limit of trophy catfish:

(a) ~~Flathead catfish greater than or equal to thirty-five (35) inches;~~

(b) ~~Blue catfish greater than or equal to thirty-five (35) inches; or~~

(c) ~~Channel catfish greater than or equal to twenty-eight (28) inches].~~

(6) While on the water or trailering on a boat ramp, multiple commercial ~~fishers~~[fishermen] per boat who do not possess a Lower Ohio River Trophy Catfish Harvest Permit shall not possess more than two (2) daily limits of trophy catfish:

(a) ~~Flathead catfish greater than or equal to thirty-five (35) inches;~~

(b) ~~Blue catfish greater than or equal to thirty-five (35) inches; or~~

(c) ~~Channel catfish greater than or equal to twenty-eight (28) inches].~~

Section 5.[Section 6.] Harvester's[Harvester] Permit.

(1) In order to retain his or her permit privilege, a harvester's[harvester] permit holder shall submit to the department postmarked by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 5[3]:022.

(2) Prior to being issued a harvester's[harvester] permit, a person shall possess a valid commercial fishing license.

(3) A harvester's[harvester] permit shall not be sold to a resident of a state that will not sell a nonresident harvester's[harvester] permit, or its equivalent, to Kentucky residents.

(4) The maximum number of resident harvester's[harvester] permits available each year shall be 101.

(5) The maximum number of nonresident harvester's[harvester] permits available each year shall be eighteen (18).

(6) A harvester's permit holder shall be eligible to transfer permit privileges to an:

(a) Immediate family member; or

(b) Unlicensed helper who:

1. Has been employed by the permit holder for a period of at

least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(7) To transfer a permit, the permit holder shall send to the department:

(a) A notarized letter documenting the name and relationship of the permit recipient; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(8) Transferability shall be voided if a commercial fishing license or harvester's permit is revoked or suspended as established in Section 13[44] of this administrative regulation.

Section 6.[Section 7.] Harvester's[Harvester] Permit Drawing [Lottery].

(1) There shall be a drawing[lottery] for the unfilled harvester's[harvester] permits below the quota.

(2) A person shall apply for the drawing[lottery] by submitting the following to the department by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The appropriate permit fee as established in 301 KAR 5[3]:022.

(3) A mailed Application for Commercial Roe-bearing Fish Harvester's Permit shall be postmarked by September 15 to be eligible.

(4) A person chosen in the drawing[lottery] shall first obtain a commercial fishing license prior to obtaining a harvester's[harvester] permit.

(5) The department shall return all permit fees to those not chosen in the drawing[lottery].

(6) If the department receives fewer resident or nonresident Applications for Commercial Roe-bearing Fish Harvester's Permits than the number of available harvester's[harvester] permits, then completed Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 shall be issued in the order they were received until the quota has been reached.

(7) If the number of Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 exceeds the number of harvester's[harvester] permits available, then a second drawing[lottery] shall be held to determine the recipients of the available permits.

Section 7.[Section 8.] Harvester's[Harvester] Permit Requirements.

(1) A harvester's[harvester] permit shall be required for a licensed commercial ~~fisher~~[fisherman] to harvest, transport, or sell roe fish or unprocessed roe.

(2) A permit shall not be required for a special commercial fishing permit holder to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) A harvester's[harvester] permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 13[44] of this administrative regulation.

(4) A harvester's[harvester] permit holder shall:

(a) Have the permit in possession while:

1. Fishing for roe-bearing fish; and

2. Transporting or selling roe-bearing fish or unprocessed roe;

(b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 8[9] of this administrative regulation; and

(c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer.

Section 8.[Section 9.] Buyer's Permit Requirements.

(1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as

established in 301 KAR 3:022.

(3) A buyer's permit holder shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) Sign the harvester's[harvester] permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester;

(f) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester's[harvester] permit holder for a period of three (3) years; and

(g) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 9.[~~Section 10.~~] Commercial Fishing Season and Size Limits.

(1) The commercial fishing season shall be open year-round in the waters listed in 301 KAR 1:150, except for:

(a) Kentucky and Barkley lakes as established in 301 KAR 1:140;

(b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and

(c) The paddlefish season, which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Kentucky and Barkley [~~and Kentucky~~] lakes, as established in 301 KAR 1:140; and

2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi rivers[Rivers].

(2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisher[fisherman] shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of the snout to the fork of the tail fin;

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except in Kentucky and Barkley lakes as established in 301 KAR 1:140; and

(c) Blue catfish, flathead catfish, and channel catfish as established in Section 4[5] of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(3) A harvester's[harvester] or buyer's[buyer] permit holder shall not possess:

(a) Unprocessed paddlefish roe after June 5; or

(b) Unprocessed shovelnose sturgeon roe after May 20.

Section 10.[~~Section 14.~~] Species Ineligible for Commercial Harvest.

(1) A commercial fisher[fisherman] shall not harvest, and shall immediately release the following species:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon, a federally endangered species;

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River;

(e) All turtle species;

(f) All mussel species except Asiatic clams (Genus Corbicula); and

(g) Alligator gar.

(2) A licensed commercial fisher[fisherman] shall only sell roe-

bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods as established in 301 KAR 1:146.

Section 11.[~~Section 12.~~] Tending Gear and Removing Fish. A commercial fisher[fisherman] shall:

(1) Tend and remove the fish from:

(a) Hoop nets or slat traps at least once every seventy-two (72) hours; and

(b) Other commercial fishing gear at least once every twenty-four (24) hours;

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(3) Remove commercial fishing gear from the water when finished fishing.

Section 12.[~~Section 13.~~] Roe Fish Egg Checking Methodology. A commercial fisher[fisherman] shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 13.[~~Section 14.~~] Reporting, License and Permit Suspension, Renewal, and Revocation.

(1) Every licensed commercial fisher[fisherman] shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the previous month's harvest, even if no harvest occurred.

(2) A harvester's[harvester] permit holder shall:

(a) Complete a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and

(b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month, in addition to the reporting requirements established in subsection (1) of this section.

(3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.

(4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.

(5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester's[harvester] permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.

(6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.

(7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license or permit holder who has not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester's[harvester] permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 3[4](2) and (3) of this administrative

regulation;

- (c) Harvesting prohibited species of fish;
 - (d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or
 - (e) Knowingly falsifying commercial harvest data.
- (12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:
- (a) Convicted of a federal commercial fishing violation; or
 - (b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

Section 14. Administrative Hearings.

(1)(43)] A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

- (a) Denied;
- (b) Suspended;
- (c) Not renewed; or
- (d) Revoked.

(2) 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, suspension, non-renewal, or revocation.

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

(4) 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 15. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008 edition;
- (b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008 edition;
- (c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008 edition;
- (d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008 edition;
- (e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023[2019] edition; and
- (f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008 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, 8:00 a.m. to 4:30 p.m. or may be obtained at <https://fw.ky.gov/Fish/Pages/Commercial-Fishing.aspx>.

RICH STORM, Commissioner

APPROVED BY AGENCY: December 15, 2023

FILED WITH LRC: December 15, 2023 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 29, 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 February 29, 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 administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage rough fish populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes and federal regulation by describing the requirements for commercial fishing 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 removes the definition section due to the creation of 301 KAR 1:001 which contains definitions for all 301 KAR 1 regulations, aligns trophy catfish harvest regulations with recreational fishing catfish regulations, removes tributaries to the Ohio River from open waters for Lower Ohio River Trophy Catfish harvest for special permit holders below Cannelton Lock and Dam on the Ohio River, provides minor edits to the Monthly Report of Commercial Fish Harvest in Kentucky, which is incorporated by reference, and cleans up some non-substantive text throughout the regulation.

(b) The necessity of the amendment to this administrative regulation: With the creation of 301 KAR 1:001, there is no need for definition sections in each individual regulation. By aligning the commercial and recreational fishing regulations for trophy catfish, better protection of these large catfish is provided to prevent overharvest. The removal of tributaries to the Ohio River below Cannelton Lock and Dam is based on trophy catfish abundance and declining harvest and use of these tributaries over the last ten years. It will provide better protection of these tributary trophy catfish populations. Finally, to make it easier to fill out the Monthly Report of Commercial Fish Harvest in Kentucky document, which is incorporated by reference, some formatting changes were made.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All commercial fishers who harvest trophy catfish commercially will be affected. Commercial fishers fishing the Ohio River above Cannelton Lock and Dam are already required to follow the trophy catfish regulations in effect for recreational fishing. Finally, all commercial fishers reporting catch and harvest data will be affected by the minor edits to the document incorporated by reference.

(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: Commercial fishers fishing the waters affected by this regulation will be limited to one trophy catfish of each species per day. The limited number of commercial fishers who fished

tributaries of the Ohio River below Cannelton Lock and Dam will no longer be allowed to harvest four Lower Ohio River Trophy Catfish per day but will be allowed to harvest the same number of trophy catfish allowed per day for recreational anglers.

(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 a small cost to commercial fishers who harvested more than one trophy catfish of each species per day in the past. The greatest impact will be to commercial fishers fishing on Kentucky and Barkley lakes, but the current estimated financial impact would be approximately \$5,000 spread across 85-95 fishers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By providing more protection to the trophy catfish, it will ensure that the population abundance remains stable, providing a stable, long-term commercial industry for trophy catfish.

(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? No. Tiering is not applied to this regulation because all commercial fishers must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources' Divisions of Fisheries 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) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon.

(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 by this administrative regulation 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 in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings in subsequent years, but protection of the trophy catfish population may provide a more stable and long-term revenue source for commercial fishers.

(c) How much will it cost the regulated entities for the first year? There will be no direct cost to the regulated entities in the first year; however, there will be a small loss in revenue for those that had harvested more than one trophy catfish of each species per day in past years.

(d) How much will it cost the regulated entities for subsequent years? There will be no direct cost to the regulated entities in subsequent years; however, there will be a small loss in revenue for those that had harvested more than one trophy catfish of each species per day in past 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: There will be a small cost to commercial fishers who harvested more than one trophy catfish of each species per day in the past. The greatest impact will be to commercial fishers fishing on Kentucky and Barkley lakes, but the current estimated financial impact would be approximately \$5,000 spread across 85-95 fishers.

(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)] Although there may be a small economic impact to the regulated entities, it will be much lower than \$500,000 and therefore will not be a "Major economic impact".

EDUCATION AND LABOR CABINET Kentucky Board of Education Department of Education (Amendment)

704 KAR 3:095. The Use of a Multitiered System of Supports~~[Response to Intervention in Kindergarten through Grade 3].~~

RELATES TO: KRS 158.305, 156.070, 156.160, 156.488, 158.070(7), 158.645, 158.791, 158.6451, 158.6453(17)(b), 158.6459

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.305(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) 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 158.305(2) requires the Kentucky Board of Education to promulgate administrative regulations to further define a multitiered system of supports~~[for the district-wide use of a response-to-intervention system]~~ for individual students in K-3~~[Kindergarten through Grade 3]~~that includes a tiered continuum

of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 158.6459 requires the Kentucky Department of Education to support schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to high school graduation. KRS 156.488 requires the Kentucky Department of Education to develop enhanced courses for students in grade 6, grade 9, grade 10, grade 11, and grade 12 that are academically behind. KRS 158.791 requires the Kentucky Department of Education to support school districts in developing teaching strategies to address academic deficiencies of students. This administrative regulation establishes the requirements for a district-wide multitiered system of supports[response-to-intervention-system] for students in K-12[Kindergarten through Grade 3].

Section 1. Definitions. (1) "Diagnostic assessment" means a formal or informal student assessment, utilizing valid and reliable tools, given to guide instruction and tailor interventions based upon individual student academic and behavioral strengths and needs in order to accelerate progress toward proficiency;["Core instruction" means instruction based on the state's academic standards as set forth in 704 KAR 3:303 and provided to all students.];

(2) "Differentiation" means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences to meet individual student needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to Tier 1 universal instruction;

[(2) "Differentiated core academic and behavioral instruction" means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences for students to meet each student's needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to the standard core instruction.];

(3) "Evidence-based" has the same meaning as in 20 U.S.C. sec. 7801(21);[means classroom practices for which there is strong evidence of success.];

(4) "Implemented with fidelity" means the accurate and consistent [provision or] delivery or application of instructional resources, interventions and assessments[instruction] as [it was]they were designed to be used.

(5) "Intervention" means an academic or behavioral instruction, practice, strategy, or curriculum that is identified through data-based problem-solving and provided to meet a student's academic and behavioral needs, in addition to Tier 1 universal instruction;

[(5) "Intensive academic and behavioral intervention" means that, in addition to core instruction and targeted intervention instruction, a student is provided additional intervention services that are tailored to the student's individualized academic or behavioral needs.];

(6) "Multitiered system of supports" or "MTSS" means a multi-level prevention system designed to maximize student achievement and social and behavioral competencies through an integration of differentiated universal instruction, assessment, and intervention.

[(6) "Intervention" means an educational or behavioral instruction, practice, strategy, or curriculum that is provided to meet a student's academic and behavioral needs, in addition to core instruction.];

(7) "Tier 1 universal instruction" means instruction provided to all students based on the state's academic standards as set forth in 704 KAR 3:303 and 704 KAR Chapter 8, and is aligned with KRS 158.6451;

[(7) "Response-to-intervention" means a multi-level prevention system to maximize student achievement and social and behavioral competencies through an integration of assessment and intervention.];

(8) "Tier 2 targeted intervention" means supplemental evidence-based intervention, in addition to and in alignment with Tier 1 universal instruction, for students identified by universal screening and diagnostic assessment data as at-risk for not meeting grade-level academic or behavioral benchmarks;

[(8) "Targeted intervention" means the use of screening data to design appropriate interventions provided, in addition to core instruction, if a student's universal screening and other data results

indicate that the student has not mastered a benchmark skill or grade level expectation in mathematics, reading, writing, or behavior.];

(9) "Tier 3 intensive intervention" means that, in addition to Tier 1 universal instruction and Tier 2 targeted intervention, a student is provided evidence-based intervention services, based on diagnostic assessment and progress monitoring data, with an intensity and duration matched to the student's individualized academic and behavioral needs; and

(10)[(9)] "Universal screening" means a systematic process of analyzing students' performance at certain points during the academic year, utilizing valid and reliable tools to assess[screening that uses specific criteria to evaluate] the learning and achievement of all students in academics and related behaviors, that may include validated indicators such as course performance, attendance, and behavior data to evaluate the effectiveness of Tier 1 universal instruction and determine which students need closer monitoring or intervention[learning differences, class attendance, tardiness, and truancy, to determine which students need closer monitoring or an intervention].

Section 2. Each local school district shall implement a comprehensive MTSS for K-12[response-to-intervention system for Kindergarten through Grade 3] that includes:

(1) A tiered delivery system with a continuum of[Multi-tiered systems of support, including] differentiated Tier 1 universal[core academic and behavioral] instruction[and targeted], Tier 2 targeted intervention, and Tier 3 intensive [academic and behavioral] intervention, delivered by individuals most qualified to provide the intervention services, in order to[that] maximize each student's academic and behavioral outcomes[student achievement and reduce behavioral problems];

(2) Universal screening and diagnostic assessments to determine individual student needs and baseline performance;

(3) Interventions that:

(a) Are evidence-based;

(b) Vary in intensity and duration based on student need;

(c) Meet the needs of the individual student;

(d) Are implemented with fidelity;

(e) Are delivered by individuals most qualified to provide the intervention services; and

(f) Are monitored through a comparison of baseline data collected prior to intervention and ongoing progress data;

(4) Support for early intervention to address academic and behavioral issues; and

(5) Data-based documentation of:

(a) Assessments or measures of behavior;

(b) Progress during instruction;

(c) Evaluation, at regular intervals, for continuous progress; and

(d) Individual student progress reports shared with the parents of each student in K-12[Kindergarten through Grade 3] that summarize the student's academic skills,[in mathematics, reading, and writing; the student's] behavior[,] and any intervention plans and services being delivered.

[Section 3. The response-to-intervention system for Kindergarten through Grade 3 shall coordinate with district-wide interventions required by KRS 158.792, 158.6453(1)(b), 158.6459(1), (2), (3), 704 KAR 3:305, Section 1(1)(b), (3)(d), 704 KAR 3:530, Section 2(1)(b), 704 KAR 3:285, Section 3(4), 707 KAR 1:300, Section 1, 707 KAR 1:310, Section 1(3)(a), and 707 KAR 1:320.];

Section 3.[Section 4.] Each local district shall submit to the Kentucky Department of Education by October 1 of each year evidence demonstrating districtwide implementation of a comprehensive MTSS,[the data required by KRS 158.305(10) to the department through the Kindergarten to Grade 3 program review required in 703 KAR 5:230.];

(1) Evidence provided by the district shall address implementation requirements as provided in Section 2 of this administrative regulation for grades K-12.

(2) The district shall also submit evidence of implementation for K-3 required by KRS 158.305(2).

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).

ROBIN FIELDS KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Ed.D., Chairperson

APPROVED BY AGENCY: December 7, 2023

FILED WITH LRC: December 8, 2023 at 9:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held February 28, 2024 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: 704 KAR 3:095 establishes the requirements for a district-wide multitiered system (MTSS) of supports for students in K-12.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. Per KRS 158.305(2), "[n]otwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs." This regulation also provides amendments that align evidence-based MTSS services for students in K-12. KRS 158.6459 requires the Kentucky Department of Education to support schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to high school graduation. KRS 156.488 requires the Kentucky Department of Education to develop enhanced courses for students in grade 6, grade 9, grade 10, grade 11, and grade 12 that are academically behind. KRS 158.791 requires the Kentucky Department of Education to support school districts in developing teaching strategies to address academic deficiencies of students.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.305(2) requires the KBE to promulgate administrative regulations to further define MTSS for individual students in K-3 that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 156.160(1) requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools. The regulation outlines the requirements for the development of a district-wide MTSS to be implemented by schools

for students in K-12.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the requirements for the development of a district-wide MTSS to be implemented by schools for students in K-12.

(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 to 704 KAR 3:095 further define Tier 1, Tier 2 and Tier 3 interventions to provide a continuum of support for students in K-12 needing additional academic or behavioral assistance. The amended regulation outlines the requirements for a district-wide MTSS and expectations for reporting evidence of implementation to the KDE.

(b) The necessity of the amendment to this administrative regulation: The amendments to 704 KAR 3:095 are necessary due to the passage of Senate Bill 9 (2022) which amended KRS 158.305. KRS 158.305(2) provides that "[n]otwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs." The amendments outline the requirements for a district-wide MTSS and expectations for reporting evidence of implementation to the KDE.

(c) How the amendment conforms to the content of the authorizing statute: The amended regulation conforms to KRS 158.305(2) by providing definitions for Tier 1, Tier 2 and Tier 3 interventions and outlines the requirements of the district in implementing a tiered continuum of interventions using evidence-based research with varying levels of intensity and duration. KRS 156.160(1) requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools. The amendments outline the requirements for the development of a district-wide MTSS to be implemented by schools for students in K-12.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to 704 KAR 3:095 provide definitions for a tiered continuum of intervention with varying levels of intensity and duration. The amendments provide districts with expectations for implementation based on universal screening and diagnostic assessments, to determine evidence-based interventions that best maximize the student's academic and behavioral outcomes as to meet the expectations provided under KRS 158.645 and 158.6451 in addition to progress reporting for families reporting requirements demonstrating evidence of implementation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools, districts and the KDE.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified above will need to take the following actions to comply with the amendments proposed in the regulation: Amendments to 704 KAR 3:095 require each local school district to implement a MTSS for grades K-12 by establishing a tiered instructional delivery system with a continuum of differentiated Tier 1 universal, Tier 2 targeted, and Tier 3 intensive intervention that address the academic and behavioral needs of individual students. Amendments require districts to include in their MTSS universal screening and diagnostic assessments, evidence-based interventions strategies, and expectations for utilizing student data to regularly monitor progress, in addition to methods for early intervention and documentation thereof, and progress reports for parents summarizing the services being offered. The KDE will provide support via staffing, training and supplemental resources to ensure the requirements

provided under 704 KAR 3:095 are met with fidelity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to schools and districts is unknown as many schools have MTSS services in place or variations thereof. The KDE cost to provide guidance to schools and districts is minimal as staffing, resources, and materials are currently in place.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students are the primary beneficiaries of the amendments. Amendments to 704 KAR 3:095 ensure that students receive a tiered continuum of instruction, based on universal screening and diagnostic assessments, in order to receive evidence-based interventions that best maximize students' academic and behavioral outcomes.

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

(a) Initially: While the initial implementation cost is unknown, the KDE will dedicate staff time to develop guidance to support schools and districts as they implement the amended requirements under 704 KAR 3:095. Depending on the individual needs of the district, and the current MTSS services in place, local staffing patterns, professional learning and resource allocation may need to be adjusted by schools and districts in order to ensure the requirements of the regulation are met.

(b) On a continuing basis: The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts in their continued MTSS efforts. Schools will need continued access to the appropriate staff, training, release time, and resources depending upon the current MTSS efforts in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal, state and district funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees. An increase in funding is dependent upon the MTSS services in place at each district and any additional implementation needs of each individual district.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky schools, districts and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.305(2) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations to further define a multitiered system of supports (MTSS) for individual students in K-3 that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 156.160 requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect on expenditures for local education agencies is unknown and dependent upon the current implementation efforts and resources in place at each local school and district.

(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.

(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.

(c) How much will it cost to administer this program for the first year? The cost to local schools and districts is unknown and dependent upon the current resources and implementation efforts in place. The budget and staffing patterns at the local district may need to be adjusted based on their current implementation efforts. KDE staff time will be impacted by the need for implementation guidance and answering questions from the field. This impact should decrease each year of implementation.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the KDE will remain available to schools and districts to provide ongoing support with little to no additional costs. Staffing patterns and staff time at the local school and district may need to be adjusted depending upon the needs of the students and the implementation efforts already in place.

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 (+/-): Kentucky schools and districts are at various phases of implementing MTSS services for students. Therefore, expenditures are unknown as it is dependent upon the implementation progress in place at the individual district and school.

Other Explanation: N/A

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

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

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

(c) How much will it cost the regulated entities for the first year? Kentucky schools and districts are at various phases of implementation of MTSS services for their students. Therefore, expenditures are unknown as it is dependent upon the implementation efforts and progress in place at the individual district and school.

(d) How much will it cost the regulated entities for subsequent years? The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts. Staffing patterns and staff time at the local school and district may need to be adjusted depending upon the needs of the students and the implementation efforts already in place.

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: Kentucky schools and districts are at various phases of implementation. Therefore, expenditures are unknown and are dependent upon the implementation efforts and progress in place at the individual district and school. The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts.

(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 is not anticipated to have a major economic impact on state or local government or regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 194A.700(1), ~~(2), (15), (26), 194A.705(2)(c), (9), (11), 202A.011(12), 209.030, 209.032, 216.510 – 216.525, 216.530, 216.532, 216.555 to 216.567, 216.570-216.597, 216.765, 216.785-216.793, 216.597, 216A.080, 216B.010, 216B.130, 216B.040, 216B.042, 216B.045-216B.130, 216B.990, 310.021, 310.031, 314.011(3), 21 C.F.R. Part 1317~~

STATUTORY AUTHORITY: KRS 216B.042, 216.597(7)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.597(7)(a) requires the cabinet to promulgate administrative regulations related to licensure and relicensure of personal care homes (PCHs) and specialized personal care homes (SPCHs). This administrative regulation establishes minimum licensure requirements for the operation of and services provided by personal care homes, including specialized personal care homes.

Section 1. Definitions.

(1) "Activities of daily living" or "ADL" is defined by KRS 194A.700(1).

(2) "Administrator" means an individual who:

(a) 1. Has a license to practice long-term care administration pursuant to KRS 216A.080; or

2. Has a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity; and

(b) Is age twenty-one (21) or older.

(3) "Ambulatory" is defined by KRS 216.597(2)(b) as having the same meaning as "ambulatory" as defined in KRS 194A.700(2)[means able to walk without assistance].

(4) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5) "Instrumental activities of daily living" or "IADL" is defined by KRS 194A.700(15)[(9)].

(6) "Licensed dietician" means a health care professional who is licensed pursuant to KRS 310.021.

(7) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including walkers, crutches, wheelchairs or other assistive medical devices[is defined by KRS 194A.700(14)] and includes the ability to:

(a) Self exit the building; and

(b) Transfer independently or with minimal assistance from bed-to-chair.

(8) "Nonambulatory" means unable to walk without assistance.

(9) "Nonmobile" means unable to move from place to place.

(10) "Nurse" is defined by KRS 314.011(3).

(11) "Personal care home" or "PCH" is defined by KRS 216.597(1)(b)[means an establishment located in a permanent building that has resident beds and provides:

(a) Supervision of residents;

(b) Basic health and health-related services;

(c) Personal care services;

(d) Residential care services; and

(e) Social and recreational activities].

(12)[(14)] "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12).

(13)[(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a portion of a patient's body.

(14)[(13)] "Serious mental illness" or "SMI" means a mental illness or disorder (but not a primary diagnosis of Alzheimer's

disease or dementia), that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one (1) or more major areas of living and is unlikely to improve without treatment, services, or supports.

(15)[(14)] "Specialized personal care home" or "SPCH" is defined by KRS 216.597(1)(c)[means a personal care home that:

(a) ~~Participates in the mental illness or intellectual disability supplement program pursuant to 921 KAR 2:015, Section 13; or~~

(b) ~~Serves residents with thirty-five (35) percent or more having an SMI].~~

(16) "Temporary condition" is defined by KRS 194A.700(26) in accordance with KRS 216.597(4).

(17) "PRN" is defined as medications administered as needed.

Section 2. Licensure Application and On-site Visits.

(1) Upon approval of certificate of need followed by approval of plans and specifications submitted in accordance with 902 KAR 20:031, an applicant for a provisional license as a PCH or SPCH shall submit the following to the Office of Inspector General:

(a) A completed Application for License to Operate a Long Term Care Facility incorporated by reference in 902 KAR 20:008, Section 9(1)(f) accompanied by the licensure fee established by 902 KAR 20:008, Section 3(2)(g);

(b) Proof of approval by the State Fire Marshal's office; and

(c) A copy of the applicant's compliance history for any other care facility the applicant operates, including a copy of all enforcement actions issued by the regulatory agency against the care facility, such as violations, fines, or negative action against the facility's license during the seven (7) year period prior to application for a provisional license.

(2) A licensed PCH or SPCH shall comply with the annual renewal process established by 902 KAR 20:008, Section 2(14)(b).

(3) On-site inspections shall be conducted in accordance with the survey intervals established by KRS 216.597(7)(c).

(4) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of a PCH or SPCH more often, if necessary.

(5) A PCH or SPCH shall comply with the:

(a) Inspection requirements of 902 KAR 20:008, Section 2(12)(b) and (c);

(b) Procedures for correcting violations established by 902 KAR 20:008, Section 2(13); and

(c) Civil monetary penalties established by KRS 216.555 to 216.567.

Section 3. Scope of Operations and Services. (1) A resident in a PCH or SPCH shall:

(a) Be admitted in accordance with KRS 216.765;

(b) Be ambulatory or mobile nonambulatory, unless the facility elects to provide services in accordance with KRS 216.597(4) to a resident who is deemed to have a temporary condition;

(c) Be able to manage most of the activities of daily living; and

(d) Have care needs that do not exceed the capability of the PCH or SPCH.

(2) An individual who is nonambulatory or nonmobile shall not be eligible for residence in a PCH or SPCH pursuant to KRS 216.597(3).

Section 4.[Section 3.] Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the PCH or SPCH;

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

(c) The development and implementation of policies related to administration and operation of the facility;[and]

(d) If the licensee is a[an] SPCH, the development and implementation of written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to community living arrangements; and

(e) If the licensee is an SPCH, access to confidential and secure

telehealth services unless access is impossible to provide due to a lack of:

1. Broadband service; or
2. An appropriate physical space for residents.

(2) Administrator.

(a) The administrator shall:

1. Be responsible for the day-to-day operation of the PCH or SPCH; and

2. Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's absence.

(b) Each SPCH shall ensure that the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months of hire ~~[from the most recent effective date of this administrative regulation]~~ and every two (2) years thereafter.

(3) Admission.

(a) A PCH or SPCH shall not care or be responsible for the care of more residents than the capacity indicated on the license.

(b) Upon admission, a PCH or SPCH shall provide the resident and a responsible member of the resident's family or other designated representative with written information regarding the facility's policies, including:

1. Services offered and charges;

2. The right to arrange for additional services under direct contract or arrangement with an outside party pursuant to KRS 216.597(5) if permitted by the policies of the PCH or SPCH;

3. The right to visitation with family and friends, subject to visiting rules and hours established by the facility; and

4. ~~[3.]~~ Meal services.

(c) Prior to admission, each resident shall have a complete medical examination in accordance with KRS 216.765.

(d) ~~[No later than three (3) months from the most recent effective date of this administrative regulation, a PCH or SPCH shall complete the SMI Screening Form for each current resident.]~~ Upon admission, a PCH or SPCH shall complete the SMI Screening Form for each new or returning resident.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult protection. PCHs and SPCHs shall have written policies that assure the reporting of allegations of abuse, neglect, or exploitation of adults 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.

(6) Emergency evacuation. Each PCH and SPCH shall have a written policy in accordance with KRS 216.597(6)(c) that describes how priority will be given to assist a resident during an emergency if evacuation of the facility is necessary and the resident requires hands-on assistance from another person to walk, transfer, or move from place to place with or without an assistive device.

(7) Nursing tasks. If nursing tasks are delegated, each PCH or SPCH shall have a written policy regarding the supervision of unlicensed personnel performing delegated tasks, including how the facility ensures compliance with the supervision requirements of 201 KAR 20:400, Section 4.

(8) Transfer and discharge.

(a) PCHs and SPCHs shall:

1. Comply with the requirements of 900 KAR 2:050 upon transferring or discharging a resident; and

2. Have written transfer procedures and agreements for the transfer of residents to a higher intensity level of care, if indicated.

(b) A PCH or SPCH that does not have a transfer agreement in effect, but has attempted in good faith to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a)2. of this subsection.

(c) The transfer procedures and agreements shall:

1. Specify the responsibilities each party assumes in the transfer of residents;

2. Establish responsibility for notifying the other party of an impending transfer; and

3. Arrange for safe transportation and transfer of files.

(d) The administrator shall initiate a transfer through the

resident's physician or appropriate agencies if the resident's condition is not within the scope of services of the PCH or SPCH.

(e) PCH or SPCH resident records.

1. If a resident transfers to another health care facility, a current summary of the resident's medical record shall accompany the resident.

2. If a resident transfers to another level of care within the same facility, a copy of the resident's record or current summary of the resident's medical record shall accompany the resident.

3. If a resident transitions into a community living setting, a current summary of, or a copy of the resident's records shall be provided to the resident and the resident's guardian.

~~(9)~~ ~~[(7)]~~ Tuberculosis Testing.

(a) All employees of a PCH or SPCH shall be screened and tested for tuberculosis in accordance with 902 KAR 20:205.

(b) Residents of a PCH or SPCH shall be screened and tested in accordance with 902 KAR 20:200.

~~(10)~~ ~~[(8)]~~ Personnel.

(a) In accordance with KRS 216.532, a PCH or SPCH 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 PCH or SPCH 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 PCH or SPCH shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) Current employee records shall be maintained on each staff member and contain:

1. Name and address;

2. Verification of all training and experience, including evidence of current licensure, registration, or certification, if applicable;

3. Employee health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection.

(e) Each employee shall be of an age in conformity with state laws.

(f) An employee who contracts a communicable or an infectious disease shall:

1. Be immediately excluded from work; and

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(g) Each dietary staff member shall wear a hair net.

(h) In-service training.

1. Each PCH or SPCH 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. Name of the individual or individuals who provided the training;

b. Date and number of hours the training was given; and

c. A summary of the training program's content.

3. In-service training shall include:

a. Policies regarding the responsibilities of specific job duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for the reporting of cases of adult abuse, neglect, or exploitation pursuant to KRS 209.030;

e. Resident rights established by KRS 216.510 to 216.525;

f. Adult learning principles and methods for assisting residents to achieve maximum abilities in ADLs and IADLs;

g. Procedures for the proper application of emergency manual restraints;

h. Procedures for maintaining a clean, healthful, and pleasant environment;

i. The aging process;

j. The emotional problems of illness;

k. Use of medication; and

l. Therapeutic diets.

4. Each SPCH shall ensure that at least one (1) direct care staff

member in addition to the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months ~~of hire~~~~[from the most recent effective date of this administrative regulation]~~ and every two (2) years thereafter. An SPCH shall employ at least one (1) direct care staff member who has received the training.

(i) Staffing requirements.

1. The number of personnel required shall be based on:

a. The number of patients; and

b. Amount and kind of personal care, health care, and supervision needed to meet the needs of the residents.

2. The administrator shall designate one (1) or more staff members to be responsible for:

a. Recordkeeping;

b. Basic health and health related services; and

c. Activity services.

3. Each PCH or SPCH shall have a full-time staff member 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.

4. In accordance with KRS 216.597(6)(a) and (b):

a. Staffing in a PCH or SPCH shall be sufficient in number and qualifications to meet the twenty-four (24) hour scheduled needs of each resident; and

b. At least~~[ensure that sufficient staff, but no less than]~~ one (1) staff member shall be awake and on-site at all times at each licensed facility~~[on duty on each floor in the facility at all times]~~.

~~(11)~~~~(9)~~ Medical records.

(a) The PCH or SPCH 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) Each record shall include:

1. Identification information, including:

a. Resident's name;

b. Social Security, Medicare, and Medical Assistance identification number (if appropriate);

c. Marital status;

d. Birthdate;

e. Age;

f. Sex;

g. Home address;

h. Religion and personal clergyman, if any (with consent of the resident);

i. Attending physician, health care practitioner acting within the practitioner's scope of practice, QMHP, dentist, and podiatrist, if any, and address and phone number for each;

j. Next of kin or responsible person, address, and telephone number;

k. Date of admission and discharge;

l. If the resident is discharged, transferred, or transitioned to a community living arrangement, a copy of the summary of resident's records; and

m. Monthly recording of the resident's weight;

2. If admitted from another facility, a discharge summary or transfer summary;

3. Admitting medical evaluation;

4. Report by the physician or health care practitioner acting within the practitioner's scope of practice, documenting completion of an annual medical evaluation of each resident;

5. Physician, health care practitioner, or QMHP progress notes indicating any changes in the resident's condition, documented at the time of each visit by the physician, health care practitioner, QMHP, or consultant;

6. Orders for medication or therapeutic services;

7. Nurses' or staff notes indicating any changes in the resident's condition as changes occur;

8. Documentation of any accident, injury, illness, medication error, or drug reaction impacting the resident;

9. Documentation of social services, dental, laboratory, x-ray, or reports from consultants or therapists if the resident receives any of these services;

10. Medication and treatment sheets, including all medications,

treatments, and special procedures performed for that resident, with the date and time of each service documented and initiated by the individual rendering treatment or administering medication;

11. Documentation of the use of an emergency manual restraint for that resident, including justification for why the procedure was used;

12. Documentation of the resident's discharge, transfer, or transition destination, if applicable;~~and]~~

13. Copy of a completed SMI Screening Form for each PCH or SPCH resident; and

14. Monthly documentation of ADL and IADL skills instruction provided to, or made available and refused by, the resident if the resident is an SPCH resident who is transitioning to living independently in the community pursuant to 908 KAR 2:065.

~~(12)~~~~(40)~~ 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.

Section 5.~~[Section 4.]~~ Provision of Services.

(1) Basic health and health related services.

(a) A PCH or SPCH shall provide basic health and health related services, including:

1. Supervision and monitoring of the resident to assure that the resident's health care needs are met;

2. Supervision of self-administration of medications;

3. Storage and control of medications; and

4. Arranging for therapeutic services ordered by the resident's health care practitioner, if the services are not available in the facility.

(b) For a PCH or SPCH, the administrator or staff person designated by the administrator shall, relating to the provision of basic health and health-related services:

1. Be responsible for obtaining medical care promptly in response to an accident, injury, or acute illness of any resident; and

2. Document any accident, injury, illness, incident, medication error, or drug reaction in the resident's medical record.

(c) Medications or therapeutic services shall not be administered or provided to any resident, except on the order of a licensed physician or other health care practitioner as authorized under the practitioner's scope of practice.

(d) If medication administration is delegated in accordance with 201 KAR 20:700, the PCH or SPCH shall have a nurse readily available in person, by telephone, or by other means of live, two-way communication to unlicensed staff at the times the staff is performing delegated nursing tasks.

(e) A PCH or SPCH 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.

(f) 1. Unlicensed staff who administer oral or topical medications to residents of an SPCH shall comply with the medication aide requirements of paragraph (e) of this subsection no later than upon adoption of increased funding under the Mental Illness or Intellectual Disability (MI/ID) Supplement Program established by 921 KAR 2:015, Section 13.

2. Unlicensed staff shall not administer a preloaded insulin injection under the delegation of a nurse to a PCH or SPCH resident prior to obtaining the CMA II credential.

(g) Administration of all medications and delivery of therapeutic services shall be recorded in the resident's medical record.

(h)~~(e)~~ 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.

(j)(f)1. The administrator or staff person designated by the administrator shall make a written report of any incident or accident involving a:

- a. Resident, including a medication error or drug reaction;
- b. Visitor; or
- c. Staff member.

2. The report shall:

- a. Identify any staff member who might have been witness to the incident; and
- b. Be filed in an incident file.

(j)(g)1. Controlled substances and medication administration. A PCH or SPCH shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner.

2. Controlled substances shall be kept under double lock, for example stored in a locked box in a locked cabinet, and keys or access codes to the locked box and locked cabinet shall be accessible to designated staff only.

3. A nurse may delegate administration of a regularly scheduled or PRN controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

4. There shall be a controlled substances bound record book with numbered pages that includes:

- a. Name of the resident;
- b. Date, time, kind, dosage, and method of administration of each controlled substance;
- c. Name of the practitioner who prescribed the medications; and
- d. Name of the:

(i) Nurse or CMA who administered the controlled substance; or

(ii) Staff member who provided assistance with or supervised self-administration by a resident whose medical record includes a written determination from a health care practitioner that the resident is able to safely self-administer a controlled substance with assistance or under supervision.

5.[4.] A staff member with access to controlled substances shall be responsible for maintaining a recorded and signed:

a. Schedule II controlled substances count daily; and

b. Schedule III, IV, and V controlled substances count at least one (1) time per week.

6.[5.] 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:

- a. After expiration of the medication; or
- b. From the date the medication was discontinued.

7.[6.] If controlled substances are destroyed on-site:

a. The method of destruction shall render the drug unavailable and unusable;

b. 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

c. 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:

- (i) Date of destruction;
- (ii) Resident name;
- (iii) Drug name;
- (iv) Drug strength;
- (v) Quantity;
- (vi) Method of destruction;
- (vii) Name of the person responsible for the destruction; and
- (viii) Name of the witness.

8.[7.] A PCH or SPCH that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);

b. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through, ~~(8), and (9)~~ (9); and

c. Limitation on the number and quantity of medications

established by 902 KAR 55:070, Section 2(6).

(k)(h) All resident medications shall be plainly labeled with the:

1. Resident's name;
2. Name of the drug;
3. Strength;
4. Name of the pharmacy;
5. Prescription number;
6. Date;
7. Prescriber's name; and
8. Caution statements and directions for use, unless a modified unit dose drug distribution system is used.

(l)(i)1. All medicines kept by the PCH or SPCH shall be kept in a locked place.

2. The nurse or CMA~~administrator or staff person designated by the administrator~~ shall:

a. ~~be responsible for administering [or supervising the self-administration of] medication.~~

3. The administrator or staff person designated by the administrator shall:

a. Be responsible for supervising the self-administration of medication;

b. Ensure that all medications requiring refrigeration are kept in a separate locked box in the refrigerator in the medication area; and

c. Ensure that drugs for external use are stored separately from those administered by mouth and injection.

(m)(j)1. A PCH or SPCH that stores and administers non-controlled substances in an EMK shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i); and

b. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

2. A PCH or SPCH that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

(n)(k)1. If a resident manifests persistent behavior that might require psychiatric treatment, the PCH or SPCH shall notify the resident's physician or health care practitioner acting within the practitioner's scope of practice to evaluate and direct the resident's care.

2. If the resident's condition does not improve for continued stay in a PCH or SPCH, the physician or health care practitioner shall initiate transfer of the resident to an appropriate facility as soon as possible.

(o)(l) Use of restraints.

1. Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

2. Restraints that require a lock and key shall not be used.

3. Emergency use of a manual restraint shall be applied only by appropriately trained personnel if:

a. A resident poses an imminent risk of physical harm to self or others; and

b. The emergency manual restraint is the least restrictive intervention to achieve safety.

4. Restraints shall not be used as:

- a. Punishment;
- b. Discipline;
- c. Convenience for staff; or
- d. Retaliation.

(p)(m) Each resident shall have an annual medical evaluation by a physician or health care practitioner acting within the practitioner's scope of practice.~~[-]~~

(q)(n) Communicable diseases. If a resident or prospective resident is suspected or confirmed as having a communicable disease for which a reasonable probability of disease transmission exists in the PCH or SPCH, the administrator or staff person designated by the administrator shall:

1. Contact a physician; and

2. Ensure that appropriate measures are taken to treat the resident with the communicable disease and prevent the disease from spreading.

(2) Residential care services. A PCH or SPCH shall provide residential care services to all residents, including:

(a) Room accommodations;
 (b) Housekeeping and maintenance services; and
 (c) Dietary services.

(3) A PCH or SPCH shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. A PCH or SPCH shall provide each resident with:

- A bed that is at least thirty-six (36) inches wide;
- A clean, comfortable mattress with a support mechanism;
- A mattress cover;
- Two (2) sheets and a pillow; and
- Bed covering to keep the resident comfortable.

2. Each bed shall be placed so that a resident does not experience discomfort because of proximity to a radiator, heat outlet, or exposure to a draft.

3. Except for married couples or domestic partners, there shall be separate sleeping quarters for males and females.

4. A PCH or SPCH shall provide:

- Window coverings;
- Bedside tables with reading lamps, if appropriate;
- Comfortable chairs;
- A chest or dresser with a mirror for each resident; and
- A night light.

5. A resident shall not be housed in a room, detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

6. Basement rooms shall not be used for sleeping rooms for residents.

7. Residents may have personal items and furniture, if feasible.

(b) Housekeeping and maintenance services.

1. A PCH or SPCH shall:

- Maintain a clean and safe facility free of unpleasant odors; and
- Ensure that odors are eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

2. A PCH or SPCH shall:

- Have available at all times a quantity of clean linen essential to the proper care and comfort of residents;
- Ensure that soiled clothing and linens receive immediate attention and not be allowed to accumulate;
- Ensure that clothing or bedding used by one (1) resident shall not be used by another resident unless laundered or dry cleaned;
- Ensure that each resident's personal clothing and bed linens are laundered as often as is necessary;
- Maintain responsibility for laundering each resident's personal clothing unless the resident or the resident's family accepts this responsibility;
- Provide laundry equipment for each resident who is capable of, and chooses to launder his or her personal clothing; and
- Label or mark each resident's personal clothing if laundered by the facility for return to the correct resident.

3. Safety. The condition of the overall environment shall be maintained in such a manner that the safety and well-being of residents, personnel, and visitors is assured.

4. Maintenance. The premises shall be well kept and in good repair as established in clauses a. through d. of this subparagraph:[:]

- The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalk, steps, porches, ramps, and fences, are in good repair.
- 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.
- 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.
- 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. Care shall be taken to use the least toxic and least flammable insecticides and rodenticides. The compounds shall be stored under lock if stored by the facility.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets and the staff member responsible for food services is not a ~~licensed~~~~licensee~~ dietitian or certified nutritionist, the responsible staff person shall consult with a licensed dietitian or certified nutritionist.

3. Menu planning.

- Menus shall be planned in writing and rotated to avoid repetition.
- A PCH or SPCH shall meet the nutrition needs of residents in accordance with physician's orders.
- Except as established in clause e. of this subparagraph, meals shall correspond with the posted menu.
- Menus shall be planned and posted one (1) week in advance.
- If changes in the menu are necessary:
 - Substitutions shall provide equal nutritive value;
 - The changes shall be recorded on the menu; and
 - Menus shall be kept on file for at least thirty (30) days.
- Food preparation and storage.
 - There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.
 - Food shall be prepared with consideration for any individual dietary requirement.
 - Modified diets, nutrient concentrates, and supplements shall be given only on the written order of a physician.
 - At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.
 - Between-meal snacks, including an evening snack before bedtime, shall be offered to all residents.
 - Adjustments shall be made if medically contraindicated.
 - Food shall be:
 - Prepared by methods that conserve nutritive value, flavor, and appearance; and
 - Served at the proper temperature and in a form to meet individual needs.
 - A file of tested recipes, adjusted to appropriate yield, shall be maintained.
 - Food shall be cut, chopped, or ground to meet individual needs.
 - If a resident refuses food served, substitutes shall be offered.
 - All opened containers or leftover food items shall be covered and dated when refrigerated.
 - Ice water shall be readily available to the residents at all times.
 - Food services shall be provided in accordance with 902 KAR 45:005.
- Personal care services. All PCHs and SPCHs shall provide services to assist residents with activities of daily living to achieve and maintain good personal hygiene, including assistance as needed with:
 - Bathing. The facility shall provide soap, clean towels, and wash cloths for each resident and ensure that toilet articles such as towels, brushes, and combs are not used in common;
 - Shaving;
 - Cleaning and trimming of fingernails and toenails;
 - Cleaning of the mouth and teeth to maintain good oral hygiene, and care of the lips to prevent dryness and cracking. The facility shall provide all residents with tooth brushes, a dentifrice, and denture containers, if applicable; and
 - Washing and grooming.
- Activity services.
 - All PCHs and SPCHs shall provide social and recreational activities to:
 - Stimulate physical and mental abilities to the fullest extent;
 - Encourage and develop a sense of usefulness and self-respect;
 - Prevent, inhibit, or correct the development of symptoms of physical and mental regression; and
 - Provide sufficient variety to meet the needs of each resident.
 - All PCHs and SPCHs shall meet the requirements established in subparagraphs 1. through 8. of this paragraph relating to the provision of activity services.

1. Staff. The administrator:
 - a. Shall designate a staff member to be responsible for the activity program; and
 - b. May accept services from a volunteer group to assist with carrying out the activity program.
2. There shall be a planned activity period each day.
3. The schedule shall be current and posted.
4. The activity program shall be planned for group and individual activities, both within and outside of the facility.
5. The staff member responsible for the activity program shall maintain a current list of residents in which precautions are documented regarding if a resident's condition might restrict or modify the resident's participation in the program.
6. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.
7. The facility shall provide supplies and equipment for the activity program.
8. Reading materials, radios, games, and TV sets shall be provided for the residents.
 - (c) An SPCH shall collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065. ADL and IADL skills training shall include instruction that is integrated into the normal rhythms of life.
 - (6) For purposes of subsection (5)(c) of this section, the following shall apply:
 - (a) "Basic instruction" in ADLs and IADLs shall have the same meaning as "assistance with" ADLs and IADLs;
 - (b) An SPCH shall not be responsible for selecting which residents receive basic instruction in ADLs and IADLs; and
 - (c) An SPCH shall not be responsible for ensuring that a resident has mastered each task defined as an ADL or IADL.

Section 6. Mental Illness or Intellectual Disability (MI/ID) Supplement Program Certification.

- (1) Office of Inspector General staff shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program established by 921 KAR 2:015, Section 13.
- (2) A personal care home's initial MI/ID Supplement Program certification inspection:
 - (a) May be separate from an unannounced inspection conducted in accordance with KRS 216.530; and
 - (b) Shall be in effect until the next licensure survey conducted in accordance with KRS 216.597(7)(c)2.
 - (3) During an MI/ID Supplement Program inspection, Office of Inspector General staff shall:
 - (a) Observe and interview residents and staff; and
 - (b) Review records to assure the facility meets the following criteria:
 1. Facility maintains documentation of staff completion of the training required by 921 KAR 2:015, Section 14(1) through (4);
 2. Facility ensures that:
 - a. The staff person who attended the one (1) day MI/ID training workshop shares information obtained from the workshop with all other direct care staff through annual in-service training or orientation pursuant to Section 4(10)(h)3.f. of this administrative regulation; and
 - b. If medication is administered to residents, administration shall be done by a nurse, CMA, or KMA in which case the nurse, CMA, or KMA shall demonstrate a knowledge of psychotropic drug side effects.
 - (4) Office of Inspector General staff shall review the facility's documentation of MI/ID training prior to performing a record review during the MI/ID Supplement Program inspection process.
 - (5) If at least thirty-five (35) percent of the resident population meets the criteria established by 921 KAR 2:015, Section 13(1)(c)2, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage in the MI/ID Supplement Program effective with the month of request for certification in the program.
 - (6) Office of Inspector General staff shall provide the

Department for Community Based Services with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, incorporated by reference in 921 KAR 2:015, Section 17(1)(d), within fifteen (15) working days of an:

- (a) Initial survey; or
- (b) Inspection conducted in accordance with KRS 216.530 and 216.597(7)(c)2.
- (7) The Office of Inspector General shall provide the Department for Community Based Services with a copy of a Type A citation issued to a specialized personal care home that participates in the MI/ID Supplement Program by the fifth working day of month following the month the citation was issued.

Section 7. Denial and Revocation.

- (1) In addition to the reasons for denial or revocation of a license in accordance with 902 KAR 20:008, Section 8, the cabinet shall deny or revoke a PCH or SPCH license in accordance with KRS 216.597(7)(a) if:
 - (a) There has been a substantial failure by the facility to comply with the provisions of:
 1. KRS 216.510 through 216.597, or 216.789; or
 2. This administrative regulation;
 - (b) The facility allows, aids, or abets the commission of any illegal act in the provision of services;
 - (c) The facility performs any act detrimental to the health, safety, or welfare of a resident;
 - (d) The facility obtains licensure by fraud or misrepresentation, including a false statement of a material in fact in:
 1. The Application for License to Operate a Long Term Care Facility; or
 2. Any records required by this administrative regulation;
 - (e) The facility denies a representative of the cabinet access to any part of the facility's books, records, files, employees, or residents;
 - (f) The facility interferes with or impedes the performance of the duties and responsibilities of the long-term care ombudsman;
 - (g) The facility interferes with or impedes a representative of the cabinet in the enforcement of this administrative regulation or fails to fully cooperate with a survey or investigation by the cabinet;
 - (h) The facility destroys or makes unavailable any records or other evidence relating to the facility's compliance with this administrative regulation;
 - (i) The facility refuses to initiate a background check or otherwise fails to comply with the requirements of KRS 216.789;
 - (j) The facility fails to timely pay any fines assessed by the cabinet;
 - (k) The facility violates any applicable building or safety codes as determined by the building code or safety code enforcement authority with jurisdiction;
 - (l) There have been repeated incidents in the facility of personnel performing services beyond their competency level;
 - (m) The facility continues to operate beyond the scope of the facility's license after the timeframe established for correction of the violation; or
 - (n) An individual with a significant financial interest in the facility:
 1. Is convicted of a felony or gross misdemeanor that relates to the operation of the facility or directly affects resident safety or care; or
 2. Had the application returned in accordance with 902 KAR 20:008, Section 2(4)(b).
 - (2) The cabinet shall follow the notification requirements of 902 KAR 20:008, Section 8(2) and (3) for denial or revocation.
 - (3) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee files a request in writing for a hearing with the cabinet within thirty (30) days after the date of the notice.

Section 8.[Section 5:] Material Incorporated by Reference.

- (1) The form, "SMI Screening Form", August 2019, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275

East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or it may be viewed on the Office of Inspector General's website at <https://chfs.ky.gov/agencies/os/oig/dhc/pages/ltr.aspx>.

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 21, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 minimum licensure requirements for the operation of and services provided by personal care homes (PCHs), including specialized personal care homes (SPCHs).

(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. This administrative regulation is also necessary to comply with KRS 216.597(7)(a), which requires the cabinet to promulgate administrative regulations to establish an initial and relicensure review process for personal care homes or specialized personal care homes, including procedures related to applying for, reviewing, and approving, denying, or revoking licensure, as well as the conduct of hearings upon appeal as governed by KRS Chapter 216B.

(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 personal care homes. This administrative regulation also conforms to the content of KRS 216.597 by establishing licensure procedures and a process for appeals.

(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 personal care 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:

1. Adds KRS 216.597 to the STATUTORY AUTHORITY section and the NECESSITY, FUNCTION, AND CONFORMITY paragraph;

2. Adds a definition of "nurse" and "temporary condition" to Section 1;

3. Adds a new Section 2, Licensure Application and On-site Visits, as required by KRS 216.597(7);

4. Permits a nonambulatory resident with a temporary condition to be admitted or continue residing in a PCH or SPCH in accordance with KRS 216.597(3);

5. Requires each SPCH to provide access to confidential and secure telehealth services unless access is impossible due to a lack of broadband services or appropriate physical space for residents;

6. Permits PCH or SPCH residents to arrange for additional services under direct contract or arrangement with an outside party pursuant to KRS 216.597(5), if permitted by the policies of the facility;

7. Requires each PCH or SPCH to have a written policy in accordance with KRS 216.597(6)(c) that describes how priority will be given to assist a resident during an emergency if evacuation of the facility is necessary and the resident requires hands-on assistance to walk, transfer, or move from place to place;

8. If nursing tasks are delegated in a PCH or SPCH, requires the facility to have a written policy regarding the supervision of unlicensed personnel performing the delegated tasks, including how the facility ensure compliance with the supervision requirements of 201 KAR 20:400, Section 4;

9. Requires compliance with the staffing requirements of KRS 216.597(6);

10. Requires a nurse to be available in person, by telephone, or by other means of live, two-way communication during the times that unlicensed staff perform delegated nursing tasks;

11. Requires unlicensed staff who administer medications under the delegation of a nurse to have a certified medication aide (CMA) or Kentucky medication aide (KMA) credential;

12. Expands the requirement that currently authorizes only a nurse to administer controlled substances by allowing CMAs to administer controlled substances if delegated by a nurse;

13. Transfers OIG requirements related to the certification of SPCHs for participation in the Mental Illness or Intellectual Disability (MI/ID) Program from 921 KAR 2:015, Section 15 to this administrative regulation as a new Section 6; and

14. Adds a new Section 7, Denial and Revocation, as required by KRS 216.597(7)(a).

(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). Additionally, the cabinet entered into a Third Amended Settlement Agreement (TASA) on June 21, 2023, with Kentucky Protection and Advocacy as it relates to services provided to individuals with serious mental illness (SMI). One of the provisions of the TASA requires that the cabinet promulgate administrative regulations within 180 days regarding personal care homes. Specifically, the regulation must require: "... access to confidential and secure telehealth services (unless that access is impossible to provide due to lack of broadband service or lack of an appropriate physical space) for residents of all PCHs that participate in the Mental Illness or Intellectual Disability Supplement Program pursuant to 921 KAR 2:015 Section 13 and all PCHs that have more than thirty-five percent (35%) residents with SMI as shown in the Annual Long Term Care Utilization and Service Report data." This amendment therefore adds language that aligns with the TASA requirement for access to telehealth services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing standards for licensed personal care homes. This amendment also conforms to the content of SB 110 from the 2023 legislative session, codified at KRS 194A.705(2)(c), because the statute applies to all long-term care facilities that provide basic health and health-related services, including personal care homes. As a category of personal care home licensed under this administrative regulation, specialized personal care homes are also subject to the requirements of KRS 194A.705(2)(c).

(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 personal care 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 personal care homes. Currently, there are 97 freestanding personal care homes and 64 long-term care facilities with personal care home beds.

(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: PCHs and SPCHs must ensure that 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. In addition, SPCHs must ensure resident access to telehealth services, if feasible.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a PCH or SPCH provides nursing services such as medication administration and does not currently have a nurse on staff or use unlicensed personnel with a CMA or KMA credential as required by KRS 194A.705(2)(c), the facility will incur increased staffing costs.

(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 enhancing liability protections for the facility and helping ensure fewer negative outcomes for residents of PCHs and SPCHs.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) 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 personal care homes, including specialized personal care homes.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.597, 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? If a PCH or SPCH provides nursing services, such as medication administration, and does not currently have a nurse on staff or use unlicensed personnel with a CMA or KMA credential as required by KRS 194A.705(2)(c), the facility will incur increased staffing costs.

(d) How much will it cost the regulated entities for subsequent years? If a PCH or SPCH provides nursing services, such as medication administration, and does not currently have a nurse on staff or use unlicensed personnel with a CMA or KMA credential as required by KRS 194A.705(2)(c), the facility will incur increased staffing 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)] There will be no major fiscal economic impact as a result of this regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317

(2) State compliance standards. KRS 194A.705(2)(c), 216.597, 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.

(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
Department for Aging and Independent Living
Division of Aging and Physical Disabilities
(Amendment)

910 KAR 1:170. Older Americans Act supportive services for the elderly.

RELATES TO: KRS 205.201, 205.203, 205.455-205.460[205.465], 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. This administrative regulation establishes the standards of operation for the Supportive Services Program in Kentucky.

Section 1. Definitions.

(1) "Access" means information and referral services, outreach service and transportation service.

(2) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant or recipient service level and development of a plan of care utilizing a holistic, person centered approach by a case manager[~~qualified independent care coordinator (ICC)~~].

(4) "Assisted transportation" means a one-way trip to accompany an eligible person who requires assistance for safety or protection to or from his physician, dentist, or other necessary service.

(5) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:

- (a) Planning;
- (b) Referring;
- (c) Monitoring;
- (d) Advocating; and
- (e) Following the timeline of the assessment agency to obtain:
 1. Service level; and
 2. Development of the plan of care.

(6) "Case management supervisor" means an individual meeting the requirements of Section 5(1) and (2) of this administrative regulation and who shall have four (4) years or more experience as a case manager.

(7) "Case manager" means the individual employee, meeting the requirements of Section 5, and who is responsible for case management including:

(a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;

(b) Completing the initial assessment, plan of care and annual reassessment;

(c)[(b)] Ensuring that all service providers have a working knowledge of the plan of care; and

(d)[(c)] Ensuring that services are delivered as required.

(8) "Community" means a county designated as either urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(9) "District" is defined by KRS 205.455(4).

(10) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;
2. Clinicals; or
3. Volunteerism.

(11) "Home modification" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility, including emergency summons systems.

(12)[~~"Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and reassessment.~~]

[(13)] "Information and assistance" means a service for individuals that provides current information about services available within the community.

(13)[(44)] "In-home services" means the performance of heavy housecleaning, yard tasks, and other activities needed to assist a functionally impaired elderly person remain in his own home.

(14)[(45)] "Legal assistance" means:

- (a) Legal advice and representation by an attorney; or
- (b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney.

(15)[(46)] "Multipurpose senior center" is defined by 42 U.S.C. 3002(36).

(16)[(47)] "Natural supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(17)[(48)] "OAA" means the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., as amended.

(18)[(49)] "Outreach" means interventions with individuals initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits.

(19)[(20)] "Planning and service area" is defined by 42 U.S.C.3002(42).

(20)[(24)] "Rural" means a community with less than 50,000 population as designated by the most current listing from the U.S. Census Bureau.

(21)[(22)] "Satellite senior center" means a facility that is used to provide services specified in Section 10(3) of this administrative regulation if a multipurpose senior center is not available to provide the services.

(22)[(23)] "Senior center services" means the provision of activities that foster the health or social well-being of individuals through social interaction and leisure.

(23)[(24)] "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

(24)[(25)] "Social service assistant" means an individual who:

- (a) Has at least a high school diploma or equivalent;
- (b) Works directly under the direction of the case management supervisor;
- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance a client needs;
- (e) Assists the client in getting services to carry out the plan of care;

(f) Coordinates services provided to the client;

(g) Assists a client in applying for other services or benefits for which he may qualify; and

(h) Monitors a client to ensure services are provided appropriately.

(25)[(26)] "Supportive service provider" means an entity that provides supportive services funded by the OAA under an approved area plan.

(26)[(27)] "Telephone reassurance" means providing a wellness check by phone with the agreement of the individual.

(27)[(28)] "Transportation" means transporting an individual from one (1) location to another.

(28)[(29)] "Unit of service" means one (1):

- (a) Hour of direct contact with or on behalf of the participant;
- (b) Contact for the information and referral service;
- (c) Call for the telephone reassurance service;
- (d) Contact for the outreach service;

- (e) One-way trip for the transportation service; and
- (f) Contact for senior center service.

(29) [(30)] "Urban" means a community with 50,000 or more population as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility.

- (1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.
- (2) Agencies shall utilize the DAIL-GA-01 Priority Screening Tool for prioritizing applicants to ensure services are targeted to those in greatest need.
- (3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities.

- (1) A service provider contracting with a district to provide supportive services supported in whole or in part from funds received from the cabinet shall:
 - (a) Provide services in accordance with the approved agency area plan which shall ensure the provision of supportive services throughout the geographic area covered under its plan;
 - (b) Review the provision of supportive services to assure safety and consistency;
 - (c) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of services;
 - (d) Permit staff of the cabinet and the district to monitor and evaluate services provided;
 - (e) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;
 - (f) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;
 - (g) Develop and maintain written personnel policies and a wage scale for each job classification;
 - (h) Designate a supervisor to assure that staff providing in-home services are provided supervision;
 - (i) Monitor, evaluate, and conduct satisfaction surveys; and
 - (j) Maintain a record for each client including:
 - 1. Participant name;
 - 2. Address;
 - 3. Phone number;
 - 4. Emergency contact information;
 - 5. Request for services;
 - 6. Verification of eligibility;
 - 7. Services provided; and
 - 8. Monitoring of services provided.
- (2) Staff of the provider agency shall not:
 - (a) Accept personal gratuities from participants or vendors; or
 - (b) Be involved in any client financial transaction without prior approval from the contracting agency.
- (3) A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.
- (4) The legal assistance provider shall:
 - (a) Specify how it intends to target services for the needs of low-income minority individuals;
 - (b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;
 - (c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;
 - (d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;
 - (e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;
 - (f) Meet at least annually with the local ombudsman program;
 - (g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants; and
 - (h) Not divulge information protected by the attorney-client privilege.

Section 4. Support Services. Services funded by the OAA and

administered by the area agencies on aging and independent living shall be provided as established in this section.

- (1) Except for senior center and access services, the case manager [ICG] and the individual shall determine the service needs of the individual.
- (2) Information and assistance services shall:
 - (a) Provide information in response to an inquiry regarding opportunities and services available;
 - (b) Assist in accessing opportunities and services;
 - (c) Follow-up to determine whether services were received and identified needs were met; and
 - (d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.
- (3) Legal assistance services shall:
 - (a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;
 - (b) Not be denied because of a person's failure to disclose information about income or resources; and
 - (c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations and numbers of participants.
- (4) Outreach services shall:
 - (a) Locate or reestablish contact initiated by providers, to identify participants in need of services;
 - (b) Provide information;
 - (c) Encourage the use of existing services;
 - (d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly and caregivers in the area, with priority given to a rural, low income minority, limited English speaking, or disabled individual; and
 - (e) Be provided by a worker with current knowledge of services available to the elderly, caregivers, and individuals with disabilities in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.
- (5) Senior center services shall provide activities which foster the health or social well-being of an individual through social interaction and the use of leisure time.
- (6) OAA Title IIIB allocation shall be provided:
 - (a) By staff who are knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director; and
 - (b) With consideration for the physical and mental conditions and activity preferences of a participant.
- (7) Telephone reassurance services shall:
 - (a) Provide regular telephone contact to or from isolated individuals;
 - (b) Be provided by a staff who is knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director;
 - (c) Include a prearranged schedule for contacting the participant;
 - (d) Maintain a log of calls documenting:
 - 1. Date of the contact;
 - 2. Length of the call;
 - 3. Summary of the contact;
 - 4. Demographics of the participant;
 - 5. Determination of safety and well-being; and
 - 6. Determination of special assistance needed;
 - (e) Establish a procedure to be implemented in the event of a non-answered call; and
 - (f) Include the participant's preference regarding frequency of calls.
- (8) Transportation services shall:
 - (a) Be provided by a trained individual;
 - (b) Carry older persons to or from community resources to access or receive needed services;
 - (c) Comply with federal, state, and local regulations; and
 - (d) Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.
- (9) Assisted transportation services shall be provided:

- (a) In accordance with subsection (8) of this section; and
- (b) To a person who requires accompaniment for reasons of safety or protection to or from his physician, dentist, or other necessary services as determined by the case manager[ICG].
- (10) In-home services shall be provided:
 - (a) By trained staff; and
 - (b) As determined by the case manager[ICG].

Section 5. Case Manager Requirements.

- (1) A case manager [~~and an ICC~~] shall:
 - (a)
 - 1. Possess a bachelor's degree in a health or human services field from an accredited college or university:
 - a. With one (1) year experience in health or human services; or
 - b. The educational or experiential equivalent in the field of aging or physical disabilities;
 - 2. Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities; or
 - 3. Be a currently licensed LPN as defined in KRS 314.011(9) who:
 - a. Has at least three (3) years of experience in the field of aging or physical disabilities; and
 - b. Is supervised by an RN who consults and collaborates on changes to the plan of care;
 - (b) Be a department certified case manager beginning July 1, 2015; and
 - (c) Be supervised by a case management supervisor.
 - (2) A master's degree from an accredited college or university may be substituted for the required experience.
 - (3) Each client shall be assigned a:
 - (a) Case manager; or
 - (b) Social service assistant.
 - (4) A client shall be assessed initially and reassessed at least annually thereafter by a case manager[~~an ICC~~] that possesses a bachelor's degree, a master's degree, or is a licensed registered nurse (RN).
 - (5) After each assessment or reassessment, the case manager[ICG] shall determine eligibility and service level based on the DAIL-HC 01, Scoring Service Level of each assessed individual.
 - (6) If the client is ineligible, the case shall be closed and the reason documented in the case record with notification mailed to the client or caregiver.
 - (7) The case manager shall:
 - (a) Be responsible for coordinating, arranging, and documenting those services provided by:
 - 1. Any funding source; or
 - 2. A volunteer;
 - (b) Make a reasonable effort to secure and utilize informal supports for each client;
 - (c) Document the reasonable effort in the client's case record;
 - (d) Monitor each client by conducting a home visit according to the assessed service level and coordinate a telephone contact between home visits. Clients shall be contacted at a minimum as follows:
 - 1. Level 1, a home visit shall be conducted every other month;
 - 2. Level 2, a home visit shall be conducted every four (4) months; or
 - 3. Level 3, a home visit shall be conducted every six (6) months; and
 - (e) Document in the case record each contact made with a client, as specified in paragraph (d) of this subsection.
 - (8) A district shall employ a case manager [~~an ICC~~] to assess the eligibility and needs for each client.
 - (9) A client assessed at a Level 1 or a Level 2 shall be assigned a case manager.
 - (10) A client assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.
 - (11) A client shall receive in-home services in accordance with an individualized plan of care developed through participant directed planning which shall:
 - (a) Relate to an assessed problem;

- (b) Identify goals to be achieved;
- (c) Identify a scope, duration, and unit of service required;
- (d) Identify a source of service;
- (e) Include a plan for reassessment; and
- (f) Be signed by the client or client's representative and case manager with a copy provided to the client.
- (12) Case management services shall not be provided to an individual on a waiting list.

Section 6. Multipurpose Senior Center Selection.

- (1) An AAAIL shall designate a multipurpose senior center within each urban community of the AAAIL's planning and service area.
- (2) If only rural communities are within an AAAIL's planning and service area, the AAAIL shall designate at least one (1) multipurpose senior center in the AAAIL's planning and service area.
- (3) Selection of a multipurpose senior center location shall be based on:
 - (a) Demographic information concerning the population of older persons in its service area; and
 - (b) The advice of public and voluntary agencies serving the elderly.
- (4) The AAAIL shall specify designation of a multipurpose senior center within its area plan.
- (5) The following factors shall be given consideration in choosing a site for the multipurpose senior center:
 - (a) Demographic information and projections;
 - (b) Accessibility to the maximum number of people with particular attention to:
 - 1. Low-income older individuals, including low-income minority older individuals;
 - 2. Older individuals with limited English proficiency;
 - 3. Older individuals residing in rural areas; and
 - 4. The number of older individuals at-risk for institutional placement;
 - (c) Proximity to other services and facilities;
 - (d) Convenience to public or private transportation or a location within walking distance for participants;
 - (e) The absence of structural barriers or difficult terrain; and
 - (f) The safety and security of participants and staff.

Section 7. Multipurpose Senior Center Specifications.

- (1) A multipurpose senior center shall:
 - (a) Provide barrier-free access and movement within the facility pursuant to 45 C.F.R. 85.42 and 85.43;
 - (b) Be clearly identified with a sign;
 - (c) Make arrangements:
 - 1. For the security of facility equipment, furniture, and files; and
 - 2. To offer activities at other sites in its service area; and
 - (d) Be free of physical hazards in accordance with the DAIL-MS-01 Multipurpose Senior Center Site Approval Checklist.
- (2) The facility shall be properly maintained and repaired to meet the safety and security of staff and participants.
- (3) An existing multipurpose senior center that does not meet the requirements of subsections (1) and (2) of this section shall comply with a corrective action plan administered by the department.
- (4) The multipurpose senior center shall have thirty (30) days from receipt of the corrective action plan to comply.
- (5) The department may withhold funding if the multipurpose senior center does not comply with the corrective action plan.

Section 8. Multipurpose Senior Center Requirements.

- (1) Each multipurpose senior center shall have a full time director and paid or volunteer staff to administer the center.
- (2) At least one (1) staff person or the director shall be present at the site during hours of operation.
- (3) At a minimum, a multipurpose senior center shall be open six (6) hours per day and five (5) days per week.
- (4) A multipurpose senior center shall provide the following services:
 - (a) Nutrition services in accordance with 910 KAR 1:190; and
 - (b) Support Services including:
 - 1. Transportation;
 - 2. Outreach;

3. Information and assistance; and
4. Other services identified in the planning and service regions area plan.

(5) A multipurpose senior center shall:

(a) Comply with the confidentiality and disclosure of a client as follows:

1. Adhere to the confidentiality and disclosure of client information pursuant to KRS 194A.060 and 5 U.S.C. 552, the Federal Freedom of Information Act;

2. Not disclose client information without the informed consent of the person or legal representative, unless the disclosure is required by a court order or for program monitoring authorized by federal, state, or local monitoring agencies; and

3. Not reveal client information that is protected by attorney-client privilege; and

(b) Refer reports of abuse, neglect, or exploitation to the Department for Community Based Services.

Section 9. Satellite Senior Center Selection.

(1) The AAAIL shall designate a satellite senior center within the planning and service area of each rural community if:

(a) A multipurpose senior center is not already located in the county; or

(b) Additional satellite senior centers are needed to provide aging programs to seniors of that area.

(2) The AAAIL shall specify designation of a satellite senior center within its area plan.

(3) A satellite senior center shall meet the multipurpose senior center selection requirements of Section 6(2) of this administrative regulation.

Section 10. Satellite Senior Center Requirements.

(1) Each satellite senior center shall have a director who is responsible for the administration of the site.

(2) At least one (1) staff person or the director shall be present at the site during hours of operation.

(3) At a minimum, a satellite senior center shall be open for eight (8) nonconsecutive hours per week.

(4) An AAAIL shall organize and advertise activities, services, and schedules of operation in advance.

(5) A satellite senior center shall:

(a) Unless already established in a multipurpose senior center in the same community, provide access services which shall include:

1. Transportation;
2. Outreach; and
3. Information and referral; and

(b) Adhere to the confidentiality requirements of Section 8(5) of this administrative regulation.

(6) A satellite senior center may provide nutrition services in accordance with 910 KAR 1:190.

Section 11. Approval of a Multipurpose and Satellite Senior Center.

(1) Supportive or nutrition services shall be funded at a multipurpose and satellite senior center if the center has been approved by the department.

(2) A multipurpose and satellite senior center shall not become operational until an on-site visit by the department has been completed and approval given by the department.

(3) Prior to approval of a multipurpose and satellite senior center, it shall be inspected by the following:

(a) The local health department for compliance with applicable health codes depending on the types of services provided at the site;

(b) The local fire department for compliance with fire and building safety codes; and

(c) An AAAIL inspection using a:

1. DAIL-MSC-01 Multipurpose Senior Center Checklist; or
2. DAIL-SSC-02 Satellite Senior Center Checklist.

Section 12. Altering Multipurpose or Satellite Senior Center.

(1) Prior approval shall be obtained from the department by an AAAIL which intends to:

(a) Close or open a new multipurpose or satellite senior center;

(b) Change the location of the multipurpose or satellite senior center;

(c) Change the method of providing services in a manner that affects availability of ongoing services; or

(d) Reduce the level or number of services.

(2) Justification for the change shall include:

(a) The proposed effective date;

(b) The need or reason;

(c) The number of participants affected;

(d) Whether this change is temporary or permanent;

(e) A cost benefit analysis;

(f) For a change made to an existing multipurpose or satellite senior center, whether this facility was altered, renovated, or constructed with Older Americans Act funds and the date work was completed;

(g) Whether the AAAIL advisory council recommended this change;

(h) What provisions are proposed to continue services to the participants; and

(i) For a proposed multipurpose or satellite senior center, costs involved in meeting local fire, health, safety, and sanitation regulations.

(3) A request to open a new multipurpose or satellite senior center shall include copies of completed local health department inspections and a completed:

(a) DAIL-MSC-01 Multipurpose Senior Center Checklist; or

(b) DAIL-SSC-02 Satellite Senior Center Checklist.

(4) If meal preparation at a new multipurpose or satellite senior center is proposed, the multipurpose or satellite senior center shall notify the:

(a) Department;

(b) Local fire department; and

(c) Local health department.

(5) The department shall review the information submitted and determine if an on-site visit is necessary for approval.

(6) In case of altered multipurpose or satellite senior center operations due to damages caused by fire, flood, storm, high winds, tornados, or other safety issues, the department shall be notified within one (1) business day that emergency alterations are necessary by:

(a) Telephone;

(b) Email; or

(c) Fax.

(7) Prior approval shall be obtained from the department on a conditional basis for emergency circumstances with final approval pending:

(a) Written documentation of the proposed change;

(b) Local fire, health, and safety inspections; and

(c) An on-site inspection by the department if the department determines a visit is necessary for final approval.

(8) The AAAIL shall specify alterations of a multipurpose and satellite senior center within its area plan for department approval.

Section 13. Training and Education. An AAAIL shall implement the following training and education programs for multipurpose and satellite senior center providers of service:

(1) An annual program assessment to identify training needs and develop correlating plans;

(2) An identification and review of resources available to meet training needs;

(3) The development of a comprehensive education and training plan;

(4) A search for additional resources to implement the plan;

(5) The coordination of education programs with private, public, governmental, and educational organizations and institutions; and

(6) A plan to implement staff development initiatives.

Section 14. Monitoring. An AAAIL shall:

(1) Monitor and assess services to determine compliance with contract requirements and an approved area plan; and

(2) Submit written evaluation of its findings to DAIL annually.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DAIL-GA-01, Priority Screening Tool", November 2014;
- (b) "DAIL-MSC-01, Multipurpose Senior Center Checklist", August 2014;
- (c) "DAIL-SSC-02, Satellite Senior Center Checklist", August 2014; and
- (d) "DAIL-HC 01, Scoring Service Level", December 2023[April 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 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/dail/Pages/default.aspx>.

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 8, 2023

FILED WITH LRC: December 8, 2023 at 12 noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 hearing shall notify this agency in writing by February 19, 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 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 February 29, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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 amended administrative regulation sets out the services administered under the Older Americans Act in Kentucky.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to carry out the requirements of the supportive services for the elderly pursuant to KRS 205.201, 205.203, 205.455-205.460, 42 U.S.C. 3001 et seq. This administrative regulation sets out the eligibility for services, service provider responsibilities, and responsibilities of the participants, program and service providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of KRS 205.201, 205.203, 205.455-205.460, 42 U.S.C. 3001 et seq. by establishing program and the requirements for eligibility and service provisions that support the Older American Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes by updates position title terminology.

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

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates terminology from independent care coordinator to case manager.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the terminology because the job duties are performed by the case managers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides supportive services for the elderly as authorized by KRS 205.201, 205.203, 205.455-205.460, 42 U.S.C. 3001 et seq. The amendment establishes additional clarification on case management job duties.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation provides more clarity on the job description of the case managers that provide supportive services to older adults.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation will affect the 15 Area Development District and their contracted service providers, senior centers supported by the Department for Aging and Independent Living, and program recipients 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: In accordance with this administrative regulation, this action should not have any effect on regulated entities because all of them currently employ case managers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation as amended has no cost to any entity since the case managers are currently active employees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The service provider case managers will have the ability to complete assessments and streamline services for the aging population receiving these services.

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

(a) Initially: There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional costs to the Department for Aging and Independent Living of this amended administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the Older Americans Act supportive services for the elderly is provided by the federal Older Americans Act program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation as amended does not increase fees or funding necessary to operate the Older Americans Act supportive services for the elderly.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does impact the Cabinet for Health and Family Services, Department for Aging and Independent Living, the Area Development Districts and, Area Agencies on Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.201, 205.203, 205.455-205.460, 42 U.S.C. 3001 et seq.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation does not generate any revenue, there is no increase in revenue.

(c) How much will it cost to administer this program for the first year? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to the Department for Aging and Independent Living for implementation of this amended administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings with the implementation of this amended administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings with the implementation of this amended administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no additional costs with the implementation of this amended administrative regulation.

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is no major economic impact with this amended administrative regulation. There is no change to the income or expenditures for the implementation of this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3001 et seq.

(2) State compliance standards. KRS 194A.050, 205.204.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 29 U.S.C. 794 provides the standards of nondiscrimination under federal grant programs, 42 U.S.C. 3018 provides guidance for the reports required under this grant program, 42 U.S.C. 3025 allows the state to designate the agency to administer the grant program, 42 U.S.C. 3027 provides the guidance for the development and submission of the required state plan, 42 U.S.C. 3030(d) provides guidance for the programs and services under this grants for supportive services.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirement than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirement than the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), [216.530, 216.557(1), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. Part 416[416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641], 42 U.S.C. 415(i), 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the commonwealth[Commonwealth] and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative

regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified immigrant" means an immigrant who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation.

(1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program.

(1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program

approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment.

(1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services.

(1) Service by a caretaker shall be provided to enable an adult to:

- (a) Remain safely and adequately:
 - 1. At home;
 - 2. In another family setting; or
 - 3. In a room and board situation; and
- (b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

- (a) A live-in attendant; or
- (b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

- (a) Often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

- (a) Client is taken daily or periodically to the home of the caretaker; or
- (b) Caretaker service is provided by the following persons living with the applicant:
 - 1. The spouse;
 - 2. Parent of an adult or minor child who has a disability; or
 - 3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation.

(1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

- (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
- (b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);
- (c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and
- (d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

- (a) Often services, including those that address subsection (1)(c) of this section, are provided;
- (b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and
- (c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

- (a) Licensed or registered in accordance with KRS Chapter 216B; or
- (b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration.

(1) Except as provided in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2,000 for an individual; or
- (b) \$3,000 for a couple.

Section 8. Income Considerations.

(1) Except as provided in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

- (a) Adding:
 - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
 - 2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

- (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
- (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

- 1. The applicant or recipient; and
- 2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need.

(1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

- (a) For a resident of a personal care home, \$1,409;
- (b) For a resident of a family care home, \$965;
- (c) For an individual who receives caretaker services:

- 1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, \$855;
- 2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, \$1,251; or
- 3. An eligible couple, both aged, blind, or having a disability and both requiring care, \$1,305; or

(d) For an individual who resides in a private residence and has SMI, \$1,313.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility.

(1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified immigrant.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of ~~\$25,000~~~~[fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month];~~

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 6 of 902 KAR 20:036~~[45(2) through (4) of~~

~~this administrative regulation]; and~~

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number, ~~[and]~~ address, and staff information as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 6 of 902 KAR 20:036~~[45(6) of this administrative regulation]; and~~

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

(7) If a Type A Citation is received, the personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(8) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(9) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(10) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(11) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with subsection (1)(c)6. of this section, for the next following quarter.

Section 14. Mental Illness or Intellectual Disability (MI/ID)

Training.

(1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

- (a) Importance of proper medication administration;
- (b) Side effects and adverse medication reactions with special attention to psychotropics;
- (c) Signs and symptoms of an acute onset of a psychiatric episode;
- (d) SMI;
- (e) SMI recovery;
- (f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;
- (g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;
- (h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;
- (i) Activities of daily living and instrumental activities of daily living;
- (j) Adult learning principles; and
- (k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

- (a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and
- (b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

- 1. Has successfully completed certified medication technician or Kentucky medication aide training; and
- 2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

- (a) Certificate to direct care staff who complete the training workshop; and
- (b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

- (a) That has applied for the MI/ID Supplement Program; and
- (b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. [MI/ID Supplement Program Certification.

(1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home

may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

- (a) Observe and interview residents and staff; and
- (b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

- a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and
- b. Maintains documentation of completion at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:

- a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

- (a) Initial survey; or
- (b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

- (a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

~~(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.~~

Section 16:] Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16.[Section 17:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 12/23 [04/15];

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(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, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at: <https://chfs.ky.gov/agencies/dcbp/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 1, 2023

FILED WITH LRC: December 6, 2023 sat 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental

program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(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 eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

(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 only includes changes affecting the Mental Illness or Intellectual Disability (MI/ID) Supplement Program. This amendment increases the supplement rate provided to participating facilities, recognizing that the cost of care provided has increased as a result of the passage of Senate Bill 110 from the 2023 Regular Session of the General Assembly, which amended KRS 194A.705(2)(c) and required specific long term care facilities to ensure that unlicensed staff administering medications have successfully completed a medication aide training and skills competency evaluation program. Most of Section 15 relating to MI/ID Supplement Program certification performed by the Office of Inspector General (OIG) has been removed from this administrative regulation and added to the OIG administrative regulation, 902 KAR 20:036.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for consistency with amendments made to 902 KAR 20:036, required by Senate Bill 110 that amended KRS 194A.705(2)(c).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.245 requires the mandatory supplementation program for needy persons who are aged, blind, or have a disability established in this administrative regulation. This amendment increases the supplemental payment amount for participants in the voluntary MI/ID program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary for consistency with 902 KAR 20:036, amended as a result of the passage of SB 110 in the 2023 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Thirteen personal care homes are currently participating in the MI/ID Supplement Program and receiving the supplement on behalf of approximately 2,000 residents.

(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 MI/ID Supplement Program is a voluntary program, but participating personal care homes will receive greater financial support for participating once this amendment becomes effective.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In order to participate in this voluntary supplement program, a personal care home must care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and other related requirements must be met.

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

(a) Initially: The cabinet estimates this supplement increase to cost approximately \$200,000 more per year and possibly more if additional personal care homes meet the MI/ID program requirements in the future.

(b) On a continuing basis: The cabinet estimates this supplement increase to cost approximately \$200,000 more per year and possibly more if additional personal care homes meet the MI/ID program

requirements in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund appropriations and agency funds are used to implement and enforce the State Supplementation Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: If the number of personal care home participants in the program increases dramatically, an increase in funding may be necessary to sustain the increased rates. There are no fees associated with the program.

(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? 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. 20 C.F.R. Part 416, 42 U.S.C. 1382e-g

(2) State compliance standards. KRS 194.050(1), 205.245

(3) Minimum or uniform standards contained in the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382 e-g

(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 a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by 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, administers this program with oversight provided by the Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be an additional cost of approximately \$200,000.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost of approximately \$200,000, possibly more if program participation increases.

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, but the increased supplement payment will help to offset costs.

(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, but the increased supplement payment will help to offset costs.

(c) How much will it cost the regulated entities for the first year? There is no cost to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There is no cost to regulated entities associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:140. Permanency[~~Foster care and adoption permanency~~] services.

RELATES TO: KRS 2.015, 194A.005(1), 199.011(3), (4), (9), 199.462, [199.467,]199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020, 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, [620.180,]625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(3) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

- (4) "Case permanency plan" is defined by KRS 620.020(1).
 (5) "Child" means:
 (a) A child defined by KRS 199.011(4) and 600.020(9);
 (b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or
 (c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
 (6) "Concurrent planning" means the cabinet simultaneously plans for:
 (a) The return of a child in the custody of the cabinet to the child's parent; and
 (b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last ~~twenty-two~~(~~twenty-two~~)(22) months, in accordance with 42 U.S.C. 675(5)(E).
 (7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
 (8) "Parent" is defined by 42 U.S.C. 675(2).
 (9) "Reasonable efforts" is defined by KRS 620.020(11).
 (10) "Relative" means an individual related to a child by blood, marriage, or adoption.
 (11) "Subsidized permanent custody" means the guardianship assistance program authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds, established in 922 KAR 1:145["Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent].

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty-four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

- (a) Have been unsuccessful; or
 (b) Are not required under the provisions of KRS 610.127.
 (2) In the provision of permanency services, the cabinet shall meet the requirements of the:
 (a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or
 (b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.
 (3) If a child entering the custody of the cabinet has an absent parent, an absent parent search shall:
 (a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
 (b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:
 1. Date of birth;
 2. Social Security number;
 3. Present or previous employers;
 4. Present or most recent address; and
 (c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.
 (4) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.
 (5) When a case conference is held in compliance with KRS 620.180(2)(a)1 for a child placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan[~~using the DPP-1281, Family Case Plan~~].
 (6) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.
 (7) Concurrent planning shall be considered:
 (a) During development of the case permanency plan; and
 (b) At the six (6) month case review.

Section 4. Permanency Goals.

- (1) A permanency goal for a child who has been removed from

the child's home of origin by a court shall be established according to the particular needs and best interest of the child.

- (2) A permanency goal shall include one (1) of the following:

- (a) Return to parent;
 (b) Adoption;
 (c) Permanent relative placement;
 (d) Legal guardianship; [or]
 (e) Subsidized permanent custody;
 (f) Transitioning to adulthood; or
 (g) Another planned permanent living arrangement.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court is returned to the parent if the cabinet determines:

- (a) A family has successfully mitigated the danger to the child associated with the removal or has a plan to provide safety for the child while making progress towards completing the case plan[~~made sufficient progress toward completing the case permanency plan~~]; and
 (b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not successfully mitigated the danger to the child associated with the removal or has a plan to provide safety for the child while making progress toward completing the case plan[~~made sufficient progress towards achieving the objectives specified in the case permanency plan~~], the cabinet shall seek a court order for:

- (a) A change in the permanency goal;
 (b) Termination of parental rights; or
 (c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

- (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
 (b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 620.180(2)(c)3 or 625.090; or
 2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

- (a) A relative or fictive kin placement has been secured;
 (b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and
 2. Monitored on a continual basis; or
 (c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1) or a case review in accordance with KRS 620.180(2)(c)1 and 2.

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court shall be permanent custody if:

- (1) Return to the parent is not in the child's best interest; and
 (2) The cabinet determines that a relative or fictive kin who does not pursue adoption, [or] legal guardianship, or subsidized permanent custody is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child who has been removed from the child's home of origin by a court shall be legal guardianship if the cabinet determines that:

- (a) Return to the parent, [or] adoption, or subsidized permanent

custody is not in the child's best interest;

(b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and

(c) Legal guardianship by the adult identified in paragraph (b) of this subsection is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Subsidized permanent custody. The permanency goal for a child who has been removed from the child's home of origin by a court shall be subsidized permanent custody if the cabinet determines that:

(1) Reunification, adoption, legal guardianship, and permanent relative custody is not in the child's best interest; and

(2) The child is eligible pursuant to Section 2 of 922 KAR 1:145.

Section 10. Transitioning to Adulthood. The permanency goal for a child who is or eighteen (18) years of age or older and has extended commitment to the cabinet or seventeen (17) years of age shall be transitioning to adulthood if:

(1) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(2) The cabinet has reviewed documentation and determined that a goal of transitioning to adulthood is in the best interest of the child;

(3) The court has determined that transitioning to adulthood is in the best interest of the child; and

(4) Approval is obtained from the commissioner or designee prior to the establishment of transitioning to adulthood as a permanency goal for children aged seventeen (17).

Section 11.[Section 9.] Another Planned Permanent Living Arrangement.

(1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 12.[Section 10.] Permanency Services.

(1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Independent living services and programming for the child in accordance with 42 U.S.C. 677;

(c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(d) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(e) Post-adoption placement stabilization services as established [described] in 922 KAR 1:530; [or]

(f) Subsidized permanent custody payments as established in 922 KAR 1:145; or

(g) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal.

(3) Cabinet resources for a prospective or existing permanent relative or fictive kin placement shall be established in 922 KAR 1:565.

Section 13.[Section 11.] Funerals and Burials. (1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:

(a) Parental rights have been terminated;

(b) Parent cannot be located; or

(c) Parent is unable to make funeral arrangements.

(2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.

[Section 12. Incorporation by Reference.

(1) "DPP-1281, Family Case Plan", 11/16, 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.]

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 21, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 permanency options available for children in the cabinet's custody and their caregiver. This administrative regulation also establishes the maximum number of children remaining in foster care longer than twenty-four (24) months and establishes permanency services available to children in placement.

(b) The necessity of this administrative regulation: This administrative regulation outlines the permanency services available

to children in foster care, prospective adoptive placements, and relative or fictive kin placements and associated requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes permanency services available to children in the cabinet's custody and their caregiver. This administrative regulation also conforms to KRS 199.467 through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of permanency options and services available to children in the custody of the cabinet and the maximum number of children remaining in foster care for longer than twenty-four (24) months.

(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 includes the subsidized permanent custody permanency goal. This is a new guardianship assistance program being implemented by the cabinet through which a nonparental relative or fictive kin caregiver and foster parent of a child may receive permanent custody of a child and financial assistance in caring for the child, authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds. The amendment also includes the transitioning to adulthood permanency goal for youth who are eighteen (18) years of age or older and have extended their commitment to the cabinet (staying in the cabinet's custody) or seventeen (17) years of age with approval.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation for consistency with other regulatory actions that establish the new subsidized permanent custody permanency option.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content authorizing statutes through the establishment of the permanency goal processed by which the cabinet shall consider when a child is applicable for subsidized permanent custody and transitioning to adulthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of a new permanency option available for children and their relative or fictive kin caregivers referred to as subsidized permanent custody pursuant to 922 KAR 1:145.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 1, 2023, there were 437 children in the cabinet's custody placed in a foster home with a relative or fictive kin caregiver. Once a child has been in a relative or fictive kin foster home for at least six months, they may be eligible for subsidized permanent custody.

(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 new or additional action required on the part of regulated entities as a result of this amendment. This amendment includes additional permanency options and services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to those impacted by this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment includes additional supports available to children in the custody of the cabinet

and their caregivers.

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

(a) Initially: This amendment has no additional cost.

(b) On a continuing basis: This amendment has no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E of the Social Security Act funds, the federal Temporary Assistance for Needy Families (TANF) Block Grant, the federal Social Services Block Grant, restricted or agency funds derived from Medicaid, and state funds are the funding sources for these administrative regulation programs.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

(2) State compliance standards. KRS 194A.050(1), 199.467, 620.180

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation through providing these services.

(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), 199.467, 620.180, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in 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 administrative regulation will generate no new revenues 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 new or additional costs to the agency to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional costs to the agency to implement this administrative 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 (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

RELATES TO: KRS [61.870,] 158.135(1)(c), 194A.005(1), [194A.050(1),] 199.011, 199.464, [199.472(1),] 199.640, [311.720(12), 311.840(3), 314.011(5), (7), 600.020, [605.100(1), 605.150(1), 620.360, 45 C.F.R. Parts 160, 164, 142 U.S.C. 671(a), 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of [Secretary for] the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for adoptive parenthood. KRS 199.640(5)(a) requires the secretary [Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to

implement the provisions of KRS Chapter 605. In addition, 42 U.S.C. 671(a)(24) includes a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents shall [will] be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation shall [will] be continued, as necessary, after the placement of the child. This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

Section 1. Definitions.

(1) "Adoptive parent" means an individual who is seeking to adopt a child placed in the custody of the cabinet.

(2) "Applicant" means an individual or family, subject to approval by the cabinet, or by a private child-placing agency, as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in 922 KAR 1:350, Section 5.

(5) [~~"Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.~~]

(6) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by:

1. A child-placing agency in accordance with 922 KAR 1:310; or
2. The cabinet in accordance with 922 KAR 1:350.

(6) [(7)] "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7) [(8)] "Medically complex" means a foster care program for a child who is determined to have a medical condition as specified in 922 KAR 1:350, Section 4.

(8) [(9)] "Professional experience" means paid employment or volunteer work in a setting where there is supervision or periodic evaluation.

(9) [(40)] "Reasonable and prudent parent standard" is defined by 42 U.S.C. 675(10).

(10) [(44)] "Respite care" means temporary care provided by another individual or family:

(a) To meet the needs of the child or provide relief to a foster or adoptive parent approved in accordance with 922 KAR 1:310 or 922 KAR 1:350; and

(b) With the expectation of a child's return to the current foster or adoptive home.

(11) [(42)] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(12) [(43)] "Trauma informed care" means training developed using an organizational strengths-based framework to recognize and respond to the impact of traumatic stress on children, caregivers, and service providers with a goal to facilitate and support the recovery and resiliency of the child and family.

Section 2. General Training Requirements.

(1) The purpose of the foster or adoptive parent training shall be to:

(a) Orient the applicant to the philosophy and process of the foster care or adoption programs;

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet;

(d) Effect behavior so that an applicant may better fulfill the role

as a foster or adoptive parent to a child; and

- (e) Emphasize:
 1. Self-evaluation; and
 2. Experiential learning.

(2)(a) A foster or adoptive parent applicant shall complete the training~~a minimum of fifteen (15) hours of~~ curricula required by the cabinet, including~~in~~ the following topic areas:

1. Information about the rights, responsibilities, and expectations of a foster or adoptive parent;
2. The importance of birth parents and culture;
3. The process of a child entering foster care;
4. Types of child maltreatment;
5. Impact of childhood trauma;
6. Stages of grief;
7. Long term effects of separation and loss;
8. Permanency planning for a child, including independent living for transitioning youth;
9. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;
10. Family functioning, values, and expectations of a foster or adoptive home;
11. Cultural competency;
12. Emergency preparedness;
13. Child development;
14. Basic discipline and behavior management skills; and
15. Reasonable and prudent parent standard.

(b) The cabinet shall waive the pre-service~~up to twelve (12) hours of pre-service~~ training curricula for an applicant seeking approval as a relative or fictive kin~~child-specific~~ foster home unless the cabinet identifies an unmet need that necessitates~~recessitates~~ training.

(c) The cabinet shall not waive the required electronic courses required by subsection (3) of this section.

(d) Training curricula specified in paragraph (a) of this subsection shall be:

1. Provided by the cabinet; or
2. Approved by the cabinet in accordance with Section 8 of this administrative regulation.

(e) Unless justification is documented pursuant to paragraphs (f) and (g) of this subsection, foster or adoptive parent training for placement of a child in the custody of the cabinet shall be completed in a group setting by each adult who resides in the household and may provide routine care to a child in the custody of the cabinet.

(f) A justification to provide foster or adoptive parent training other than in a group setting pursuant to paragraph (e) of this subsection shall:

1. Include the circumstance that prevents the foster or adoptive parent training from occurring in a group setting; and
2. Be documented utilizing the DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training.

(g) A justification completed in accordance with paragraph (f) of this subsection shall be placed in the foster or adoptive parent's case file.

(h) An applicant shall not receive more than eight (8) hours of individualized training during a twenty-four (24) hour period.

(3) In addition to initial training requirements in subsection (2)(a) of this section, a foster or adoptive parent applicant shall complete the following electronic courses provided by the cabinet prior to approval:

- (a) Pediatric Abusive Head Trauma;
- (b) First Aid and Universal Precautions;
- (c) Medication Administration;
- (d) Medical Passports; and
- (e) Reasonable and Prudent Parenting.

(4) First aid certification may substitute for the training requirement provided within subsection (3)(b) of this section if the foster or adoptive parent applicant provides documentation of current certification.

Section 3. General Annual Training Requirements.

(1) Prior to or during the month of the second anniversary date of a foster or adoptive parent's initial approval, the foster or adoptive

parent shall complete a minimum of thirty (30) hours of training in the following areas:

(a) Trauma informed care curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation;

(b) Psychotropic medications curriculum provided by the cabinet;

(c) Sexual abuse curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation; ~~and~~

(d) Behavior management and skill development;

(e) Advocacy and self-care; and

(f) Culture and maintaining connections.

(2) If a private child-placing agency provides training in accordance with subsection (1) of this section prior to a foster or adoptive home's approval, the thirty (30) hours shall be in addition to the ~~fifteen (15) hours of~~ pre-service training required by Section 2(2) of this administrative regulation.

(3) If training requirements of subsections (1) and (2) of this section are met, a foster or adoptive parent shall complete the following prior to or during each subsequent anniversary of the foster or adoptive parent's initial approval:

(a) Ten (10) hours of private child-placing agency or cabinet-sponsored training related to knowledge or skills relevant to foster parenting, or training approved in advance by the private child-placing agency or the cabinet; and

(b) If applicable, training as specified in Section 2(3)(a) of this administrative regulation once every five (5) years in accordance with KRS 199.464.

(4)(a) The cabinet may waive annual ongoing training requirements for a relative or fictive kin foster home ~~approved as a child-specific foster home~~.

(b) The cabinet shall assess the need for ongoing training for the relative or fictive kin~~child-specific~~ foster home during the re-evaluation.

Section 4. Medically Complex Foster Parent Training Requirements. (1) In addition to the general training requirements established in Section 2 of this administrative regulation and annual training requirements established in Section 3 of this administrative regulation, a medically complex foster parent applicant shall:

(a) Complete twelve (12) hours of cabinet-provided medically complex training in the following topic areas specific to children with medical complexity:

1. Growth and development;
2. Nutrition;
3. Documentation of provided care;
4. Medical conditions; and
5. Standards of practice related to the medically complex home type; and

(b) Hold a current certification in infant, child, and adult CPR and first aid.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, an approved medically complex foster parent shall:

(a) Meet the requirements in subsection (1)(b) of this section;

(b) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(c) Complete twelve (12) hours of ongoing cabinet-provided training related to the care of children with medical complexity.

(3) Professional experience related to the care of a child with medical complexity may substitute for the initial and annual medically complex training requirements specified in subsections (1)(a) and (2)(c) of this section if approved by designated cabinet staff based on the foster or adoptive parent:

(a) Being a health professional; and

(b) Having completed twelve (12) hours of continuing education focusing on pediatrics within the past year that will assist the parent in the care of a child with medical complexity.

Section 5. Therapeutic Foster Care Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements

specified in Section 3 of this administrative regulation, a therapeutic foster care applicant in accordance with 922 KAR 1:310 shall complete twelve (12) hours of private agency-sponsored training or training approved in advance by the child-placing agency in the following topic areas:

- (a) Specific requirements and responsibilities of a therapeutic foster care home;
- (b) Crisis intervention and behavior management;
- (c) De-escalation techniques;
- (d) Communication skills;
- (e) Skill development;
- (f) The dynamics of a child who has experienced sexual abuse or human trafficking; and
- (g) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved therapeutic foster parent shall:

- (a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and
- (b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of private agency-sponsored training or training approved in advance by the private agency in topic areas relevant to therapeutic foster care.

(3) A therapeutic foster care applicant may concurrently complete general training requirements as specified in Section 2 of this administrative regulation and training requirements established in subsection (1) of this section.

Section 6. Care Plus Training Requirements.

(1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a care plus applicant in accordance with 922 KAR 1:350 shall complete twelve (12) hours of cabinet-sponsored training or training approved in advance by the cabinet in the following topic areas:

- (a) Specific requirements and responsibilities of a care plus foster home;
- (b) Crisis intervention and behavior management;
- (c) De-escalation techniques;
- (d) Communication skills;
- (e) Skill development;
- (f) Cultural competency;
- (g) The dynamics of a child who has experienced sexual abuse or human trafficking; and
- (h) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved care plus foster parent shall:

- (a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and
- (b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet prior to or during the anniversary month of initial approval as a foster parent in the topic areas described in subsection (1) of this section.

Section 7. Respite Care Providers. If a respite provider is not approved as a foster or adoptive parent in accordance with 922 KAR 1:350 or 922 KAR 1:310, prior to initial approval as a respite care provider, the individual shall complete a minimum of two (2) hours of cabinet or private child-placing agency provided curriculum including an overview of the department and the policies and procedures of the agency related to the care of the child.

Section 8. Preapproval of Training Curricula. (1) If a private child-placing agency intends to offer curricula other than curricula provided by the cabinet as specified in Sections 2(2) or 3(1) of this administrative regulation, the private child-placing agency shall submit its curricula to the cabinet or its designee for consideration.

(2) The cabinet shall approve curricula that are:

- (a) Comparable in content to curricula provided by the cabinet; or
- (b) Recognized evidence-based practices.

- (3) The cabinet shall make a determination:
 - (a) Within thirty (30) calendar days; or
 - (b) As a part of the child-placing agency's initial application to provide services to a child in the custody of the cabinet.

Section 9. Incorporation by Reference.

(1) "DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training", 11/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 27, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish and establish training requirements for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to establish the policies and procedures for minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish the policies and procedures for minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes training requirements for relative or fictive kin foster homes eligible to become subsidized permanent custodians, a new guardianship assistance program being implemented by the cabinet through which a nonparental relative or fictive kin caregiver and foster parent of a child may receive permanent custody of a child and financial assistance in caring for the child. "Child specific" language is also being deleted as these foster homes will be referred to as relative or fictive kin foster homes. The specific number of pre-service training hours required in this administrative regulation is being removed. The cabinet shall continue to waive pre-service training for relative or fictive kin caregivers unless a specific need for training is identified.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation for consistency with other regulatory actions that establish the new subsidized permanent custody permanency option.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content authorizing statutes through the establishment of training requirements for relative or fictive kin care providers as foster parents as subsidized permanent custodians, a guardianship assistance program as authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of a new permanency option available for children and their relative or fictive kin caregivers referred to as subsidized permanent custody pursuant to 922 KAR 1:145.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 1, 2023, there were 437 children in the cabinet's custody placed in a foster home with a relative or fictive kin caregiver. Once a child has been in a relative or fictive kin foster home for at least six months, they may be eligible for subsidized permanent custody. Also, as of this date, there were 2,743 children placed in public (cabinet) foster 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: There will be no new or additional action required on the part of regulated entities as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to those impacted by this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be oversight and assessment to ensure compliance of training requirements for foster parents, adoptive parents, and respite care providers for foster or adoptive children in the custody of the cabinet.

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

(a) Initially: This amendment will be enacted through practices and contacts that are already a part of existing services provision so that there will be no additional costs.

(b) On a continuing basis: This amendment is technical and conforming in nature and is not projected to entail a new or additional ongoing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E of the Social Security Act funds, the federal Temporary Assistance for Needy Families (TANF) Block Grant, the federal Social Services Block Grant, restricted or agency funds derived from Medicaid, and state funds are the funding sources for these broad administrative regulation programs.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not 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 administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a), 675

(2) State compliance standards. KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a), 675

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1), 45 C.F.R. Parts 160, 164, 42 U.S.C. 671(a), 675

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in 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 administrative regulation will generate no new revenues 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 new or additional costs to the agency to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional costs to the agency to implement this administrative 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 (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no

cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 605.120, 610.110, 620.020(1), 620.090, 620.140, 620.142, 620.170, 42 U.S.C. 601-619, 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation establishes the service array available to a relative or fictive kin caregiver pursuant to KRS 620.142(1).

Section 1. Definitions.

(1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means a:

(a) Child defined by KRS 199.011(4) and 600.020(9);

(b) Person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet

the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 2:160.

(6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Kentucky Transitional Assistance Program" or "KTAP" means ~~the program~~ Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is ~~deprived of parental support or care, as~~ established in 921 KAR 2:006.

(9) "Parent" is defined by 42 U.S.C. 675(2).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative or Fictive Kin.

(1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:

(a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative;

(b) Discuss a prospective relative or fictive kin placement with the:

1. Child's parent; and

2. Child, based upon the age and development of the child; or

(c) Require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered pursuant to KRS 620.140(1)(c).

(2) Cabinet staff shall make reasonable attempts to:

(a) Contact the relative or fictive kin; and

(b) Assess the relative's or fictive kin's fitness to serve as a placement resource for the child in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a) Disclose legal and service options available to a prospective relative or fictive kin:

1. Who is being assessed as a placement resource; and

2. Prior to the time a child is placed in the relative's or fictive kin's home; and

(b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin.

(1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:

(a) Complete a safety check and review with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical and dental services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;

(ii) Alcoholic beverages;

(iii) Poisonous materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;

(v) Unsupervised contact with the birth parent, if prohibited; and

(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and

3. Fitness in accordance with 922 KAR 1:490; or
(b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.

(2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent or subsidized permanent custody caregiver shall meet the training requirements established in 922 KAR 1:495.

(3) The cabinet shall:

(a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and

(b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.

(4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:

(a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and

(b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.

(5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative or Fictive Kin Placement Support Benefit.

(1) To the extent that funds are available, the cabinet shall provide, if requested, a one (1) time per placement relative or fictive kin placement support benefit:

(a) To facilitate the child's~~[cabinet's]~~ placement ~~[of a child]~~ with a nonparental relative or fictive kin ;

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative, fictive kin, or the cabinet due to:

1. Alleged child~~[Child]~~ abuse or neglect; or

2. The death of both parents;

(c) That will provide for a child's immediate needs, such as:

1. Clothing;

2. School supplies;

3. Additional furniture; or

4. A deposit for a larger apartment; and

(d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	\$350
2	\$700
3	\$1,050
4	\$1,400
5	\$1,750
6 or more	\$2,100

(2)(a) The relative or fictive kin placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative or fictive kin caregiver with whom the child is placed; or

2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Prior to the provision of the relative or fictive kin placement support benefit, the relative, fictive kin, or vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3)(a) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

1. Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

2. Determined eligible for KTAP pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(b) Pursuant to 42 U.S.C. 601, Temporary Assistance for Needy Families Block Grant funds shall not be provided to a fictive kin caregiver.

(4) A relative or fictive kin caregiver shall not be eligible for an initial clothing allowance as a foster parent if the relative or fictive kin receives the relative or fictive kin placement support benefit.

Section 5. Legal Options.

(1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A written plan in accordance with 922 KAR 1:330;

2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or

3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-ordered custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100;~~or~~

(e) Guardianship in accordance with KRS Chapter 387; or

(f) Subsidized permanent custody in accordance with 42 U.S.C. 673 and 922 KAR 1:145.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and

2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet for the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or

2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options.

(1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

(a) The Relative or Fictive Kin Placement Support Benefit in accordance with Section 4 of this administrative regulation;

(b) CCAP in accordance with 922 KAR 2:160;

(c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;

(d) KTAP if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

(e) The Kinship Care Program in accordance with 922 KAR 1:130;

(f) Health benefits for the child:

1. In accordance with 907 KAR 20:005; or

2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

(g) Foster care per diem in accordance with:

1.a. 922 KAR 1:350; or

b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and

2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;

(h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;

(i) To the extent funds are available, post-permanency services, including:

1. Subsidized permanent custody in accordance with ~~guardianship under~~ 42 U.S.C. [674 and] 673 and 922 KAR 1:145[once the benefit is available]; or

2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or

(j) The Supplemental Nutrition Assistance Program if application is made and approved in accordance with 921 KAR 3:030.

(2) To the extent funds are available, [effective October 1, 2019,] the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

(a) Mental health and substance abuse prevention and treatment services; or

(b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

(a) A hotline;

(b) Online portal;

(c) Crisis intervention;

(d) Support group;

(e) Advocacy;

(f) Caregiver training;

(g) Community education; and

(h) Referral to community resource or provider, such as:

1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;

2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;

3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;

5. Mental health programming; or

6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.

(4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals.

(1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.

(2) An appeal concerning CCAP shall be made in accordance with 921 KAR 2:055, 922 KAR 2:020, or 922 KAR 2:260.

(3) An appeal regarding KTAP shall be made in accordance with 921 KAR 2:055.

(4) An appeal concerning the Supplemental Nutrition Assistance Program shall be made in accordance with 921 KAR 3:060 or 921 KAR 3:070.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 27, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 service array for a relative or fictive kin caregiver of a child in the state's custody.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service array for a relative or fictive kin caregiver required by KRS 620.142(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation conforms to the content of the authorizing statutes through its establishment of the service array for a relative or fictive kin caregiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of a service array for a relative or fictive kin caregiver.

(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 includes references to a new permanency option for children who have been removed from their home of origin, subsidized permanent custody. This is a new type of guardianship program being implemented by the cabinet through which a nonparental relative or fictive kin caregiver and foster parent of a child may receive permanent custody of a child and financial assistance in caring for the child. The amendment also includes that the relative or fictive kin placement support benefit be provided upon each placement of a child if requested and applicable, rather than only one time.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for implementation of the cabinet's new subsidized permanent custody permanency option and for consistency with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This amendment includes a new permanency option available to relative or fictive kin caregivers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment reflects the provision of a new permanency option and establishes services and assistance available to relative or fictive kin caregivers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 1, 2023, there were 437 children in the cabinet's custody placed in a foster home with a relative or fictive kin caregiver. Once a child has been in a relative or fictive kin foster home for at least six months, they may be eligible for subsidized permanent custody.

(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 new requirements. This amendment includes an additional new permanency option and additional benefits that may be available to caregivers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no new requirements, but additional supports are available.

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

(a) Initially: The cabinet projects a possible cost increase of \$535,000 in providing the relative or fictive kin placement support benefit on a more frequent basis.

(b) On a continuing basis: Approximately \$535,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The one million dollar per year General Fund appropriation specifically for the Relative Placement Support Benefit and additional General Fund dollars as needed. The portion of this funding provided to relative caregivers is used as Maintenance of Effort General Funds applied towards federal Temporary Assistance for Needing Families (TANF) funding.

(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 associated with 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? This administrative regulation is applied in a like manner statewide, but relatives and fictive kin caring for more children receive a higher amount of financial assistance to support the care of the children.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 671, 673, 675

(2) State compliance standards.

KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 671, 673, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements than those required by the federal mandate. It does vary in providing cash assistance to fictive kin caregivers pursuant to state law, KRS 620.142(1).

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements than those required by federal mandates.

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 and government-supported programming for relative and fictive kin caregivers 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 194A.050(1), 605.130(7), 605.150(1), 620.142(5), 42 U.S.C. 601-619, 671, 673, 675

(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.

(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.

(c) How much will it cost to administer this program for the first year? The cabinet estimates a cost of approximately \$1,605,450 to provide the relative or fictive kin placement support benefit payment each year.

(d) How much will it cost to administer this program for subsequent years? The cabinet estimates a cost of approximately \$1,605,450 to provide the relative or fictive kin placement support benefit payment each year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No savings will be generated by this amendment, but it does provide for additional supports for relative or fictive kin caregivers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No savings will be generated by this amendment, but it does provide for additional supports for relative or fictive kin caregivers.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities.

(d) How much will it cost the regulated entities for subsequent years? There is no cost 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)]. This administrative regulation will not have a major economic impact, but does provide services and supports to relative or fictive kin caregivers.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872,[—194A.040,] 202A.051, 202B.100, Chapter 209, 387.540(1)[, 42 U.S.C. 1397]

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and

necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Authorized agency" is defined by KRS 209.020(17).
- (4) "Caretaker" is defined by KRS 209.020(6).
- (5) "Emergency" is defined by KRS 209.020(11).
- (6) "Employee" is defined by KRS 209.032(1)(a).
- (7) "Exploitation" is defined by KRS 209.020(9).
- (8) "Investigation" is defined by KRS 209.020(10).
- (9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that is inconsistent with an individual's medical care and:
 - (a) Requires medical or therapeutic treatment;
 - (b) Is manifested by a behavioral change; or
 - (c) Caused the person to feel fear, distress, humiliation, or ridicule.
- (10) "Neglect" is defined by KRS 209.020(16).
- (11) "Protective services" is defined by KRS 209.020(5).
- (12) "Records" is defined by KRS 209.020(15).
- (13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.
- (14) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

- (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
 - (b) Provide the information specified in KRS 209.030(4).
- (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.
- (3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.
- (4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
- (5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
- (a) Community resources;
 - (b) General adult services in accordance with 922 KAR 5:090; or
 - (c) A domestic violence protective services provider.
- (6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
- (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
 - (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
- (7) The cabinet shall initiate an investigation upon acceptance of a report of:
- (a) Abuse if the report alleges an adult:
 1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;
 2. Has an injury that:
 - a. Was inflicted by another person; or
 - b. Is of unknown origin in a critical area of the body;
 3. Was sexually abused;
 4. Was subjected to unreasonable confinement;
 5. Was subjected to intimidation; or
 6. Received a punishment that resulted in pain, injury, or mental injury;
 - (b) Neglect of an adult that may result in harm to the health and

safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
 - a. An act or omission by self or a caretaker; or
 - b. The absence of a caretaker;
 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;
- (c) Exploitation of an adult if the report alleges an adult has lost or is losing resources to a person in a position of trust to the alleged victim as a result of at least one (1) of the following:
1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
 2. Physical or emotional dependency;
 3. Manipulation; or
 4. Acquiescence; and
 5. ~~Loss of resources to a person in a position of trust to the alleged victim;~~ or
 - (d) An adult in need of protective services.
- (8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
- (9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective ~~services~~[service] investigation:
- (a) The report does not meet the statutory definitions of:
 1. Adult; ~~and~~
 2. ~~a.~~ Abuse;
 3. ~~b.~~ Neglect; or
 4. ~~c.~~ Exploitation; or
 - (b) There is insufficient information to:
 1. Identify or locate the adult; or
 2. Explore leads to identify or locate the adult.
- (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):
- (a) For a determination of investigation assignment by cabinet supervisory staff;
 - (b) To the local guardianship office, if the adult is a state guardianship client; and
 - (c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective ~~Services~~[Service] Investigations.

- (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).
- (2) An adult protective ~~services~~[service] investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.
- (3) Information obtained as a result of a protective ~~services~~[service] investigation shall be kept confidential in accordance with KRS 209.140.
- (4) Requests for written information of the protective

services[service] investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation.

(a) If the accepted report of alleged adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

1. ~~[(a)]~~ An emergency, the investigation shall be initiated within four (4) hours; or

2. ~~[(b)]~~ A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(b) If the accepted report of alleged adult abuse or neglect resulted in the death of an adult, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies;

2. Statement may be used in an administrative hearing conducted by the cabinet; and

3. Individual may be required to testify in an administrative hearing or in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation.

(1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective services[service] investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4); and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective services[service] case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and

(b)

1. Abuse;

2. Neglect; or

3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the vulnerable adult maltreatment[caregiver misconduct] registry established by 922 KAR 5:120.

Section 7. Opening a Case.

(1) A case may be opened:

(a) As a result of a protective services[service] investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled

Persons.

(1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
- (b) Manage financial affairs; or
- (c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective services[service] situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization.

(1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

- (a) The adult lacks the capacity to consent or refuses mental health treatment;
- (b) Other resources are not available;
- (c) Another petitioner is absent or unavailable; and
- (d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting.

(1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

- 1. Age;
- 2. Demographics;
- 3. Type of abuse;
- 4. The number of:
 - a. Accepted reports; and
 - b. Substantiated reports; and
- 5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning.

(1) The cabinet's decision to close an adult protective services[service] case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

- (b) The request of the adult; or
- (c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective services[service] case; and

(b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.

(3) If an adult protective services[service] case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective services[service] case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive

measures.

Section 14. Appeal Rights.

(1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights in accordance with 922 KAR 5:120.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 1, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 cabinet procedures for adult protection assessments and investigations of abuse, neglect, or exploitation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish adult protection services procedures.

(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 cabinet procedures for an adult protection assessment or investigation of abuse, neglect, or exploitation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for an adult protection assessment or investigation of abuse, neglect, or exploitation.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the investigation acceptance criteria for adult abuse, neglect, or exploitation with the expressed permissions of the adult during emergency and nonemergency circumstances. This amendment also seeks to add an investigation timeframe for reports of alleged adult abuse or neglect that resulted in the death of an adult.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish additional acceptance criteria and investigation timeframes in regards to adult

abuse, neglect, and exploitation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement of cabinet procedures for an adult protection investigation or assessment of abuse, neglect, or exploitation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by clarifying acceptance criteria for adult exploitation and investigation timeframes for adult abuse, neglect, or exploitation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 2023, the cabinet received 57,172 reports of alleged abuse, neglect, or exploitation of an adult that resulted in 8,681 investigations. There were 1,472 substantiations with 1,472 unique victims.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through 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): Regulated entities will experience no new or additional cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides needed clarification. Vulnerable adults served through this administrative regulation will benefit from clarifications in the investigation acceptance criteria for adult abuse, neglect, or exploitation.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of adult protective services is funded by the federal Social Services Block Grant and General Funds.

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

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

(9) TIERING: Is tiering applied? 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 will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 209.030(1)

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

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no cost savings associated with this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this adult protective services amendment.

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

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

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 5:120. Vulnerable adult maltreatment[Caregiver misconduct] registry and appeals.

RELATES TO: KRS Chapter 13B, 194A.060, 205.140, Chapter 209, 42 U.S.C. 1320d-1320d-9, [42 U.S.C.]1397-1397e, 1397m-1

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to

promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Cabinet" means the Cabinet for Health and Family Services.
- (4) "Department" is defined by KRS 209.020(3).
- ~~(5) [(4)]~~ "Employee" is defined by KRS 209.032(1)(a).
- ~~(6) [(5)]~~ "Exploitation" is defined by KRS 209.020(9).
- ~~(7) [(6)]~~ "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:
 - (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
 - (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
 1. Submit a written request for appeal; or
 2. Participate in a proceeding related to an administrative hearing.
- ~~(8) [(7)]~~ "Investigation" is defined by KRS 209.020(10).
- ~~(9) [(8)]~~ "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.
- ~~(10) [(9)]~~ "Neglect" is defined by KRS 209.020(16).
- ~~(11) [(10)]~~ "Records" is defined by KRS 209.020(15).
- ~~(12) [(11)]~~ "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.
- ~~(13) [(12)]~~ "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- ~~(14) [(13)]~~ "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Vulnerable Adult Maltreatment~~[Caregiver misconduct]~~ Registry.

- (1) The cabinet shall establish a vulnerable adult maltreatment~~[caregiver misconduct]~~ registry that contains an individual:
 - (a) Who was an employee or a person acting with the expectation of compensation;
 - (b) Who was the perpetrator of adult abuse, neglect, or exploitation:
 1. Pursuant to 922 KAR 5:070; and
 2. Substantiated on or after July 15, 2014; and
 - (c) With a validated substantiated finding of adult abuse, neglect, or exploitation.
- (2) An individual with a validated substantiated finding of adult abuse, neglect, or exploitation shall:
 - (a) Remain on the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry for a period of at least seven (7) years; and
 - (b) Be removed from the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry:
 1. In accordance with the error resolution process described in Section 6 of this administrative regulation if an error is confirmed; or
 2. After a period of seven (7) years if:
 - a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry; and
 - b. Cabinet records indicate that the incident for which the individual's name was placed on the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry did not relate to an adult fatality or near fatality related to adult abuse or neglect.
- (3) The vulnerable adult maltreatment~~[caregiver misconduct]~~ registry shall be available for a web-based query using a secure methodology by:
 - (a) A vulnerable adult services provider in accordance with KRS 209.032(2); ~~and~~
 - (b) An individual in accordance with KRS 209.032(3); and

(c) An employee of the cabinet with a legitimate interest in the case.

(4) The vulnerable adult maltreatment~~[caregiver misconduct]~~ registry shall be accessible through:

- (a) The department's main webpage; or
- (b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.
- (5) If an individual or a vulnerable adult services~~[service]~~ provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Vulnerable Adult Maltreatment~~[Caregiver misconduct]~~ Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding.

- (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address.
- (2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:
 - (a) The factual basis for the finding of adult abuse, neglect, or exploitation;
 - (b) The results of the investigation;
 - (c) The perpetrator's right to appeal the substantiated finding in accordance with KRS 209.032 and this administrative regulation;
 - (d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and
 - (e) A statement that a perpetrator of a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry.
- (3)(a) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time if the finding appears to be improper based upon:
 1. A review of the cabinet's records; or
 2. Subsequent discovery of additional information.
- (b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and (2) of this administrative regulation.

Section 4. Request for Appeal.

- (1) In accordance with KRS 209.032, if the cabinet makes a finding that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through an administrative hearing.
- (2) A request for appeal shall:
 - (a) Be submitted:
 1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and
 2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;
 - (b) Describe the nature of the investigative finding;
 - (c) Specify the reason the individual disputes the cabinet's substantiated finding; and
 - (d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation, if available.
- (3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.
- (4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be subject to review through an administrative hearing.

Section 5. Administrative Hearing.

(1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the:

(a) Perpetrator does not request an administrative hearing in accordance with Section 4 of this administrative regulation;

(b) Perpetrator fails to:

1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and

2. Demonstrate good cause; or

(c) Cabinet's substantiated finding is upheld through the administrative hearing process.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only in accordance with KRS 194A.060, 205.140, 42 U.S.C. 1320d-1320d-9, [42 U.S.C.-]1397-1397e, 1397m-1, 920 KAR 1:060, and 922 KAR 1:510.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 6 of this administrative regulation.

Section 6. Error Resolution.

(1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the vulnerable adult maltreatment[caregiver misconduct] registry query which resulted in the error being identified; and

2. Error contained in the vulnerable adult maltreatment[caregiver misconduct] registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b)1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

(1) The "DPP-246, Vulnerable Adult Maltreatment[Caregiver Misconduct] Registry Self-Query", 12/23[14/14], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621; Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbbs/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 vulnerable adult maltreatment (formerly caregiver misconduct) registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of the vulnerable adult maltreatment registry, including due process and error resolution for correction of the cabinet's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a vulnerable adult maltreatment registry for individuals who have a substantiated adult abuse, neglect, or exploitation finding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of a vulnerable adult maltreatment registry.

(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 primarily updates the name of the caregiver misconduct registry to the vulnerable adult maltreatment registry and makes other minor amendments of a technical nature, including adding a definition and clarifying those who have access to the registry. Material incorporated by reference is also being amended to reflect the change in the name of the registry and to update contact information.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the registry name to reflect accuracy of registrant information and makes other minor necessary updates.

(c) How the amendment conforms to the content of the authorizing statutes: The registry is required by statute, this amendment conforms to the content of the authorizing statutes by clarifying definitions and who may access the registry. The amendment also updates the registry name to reflect accuracy of registrant information.

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

administration of the statutes by clarifying definitions, ensuring staff access, and updating the registry name to reflect accuracy of registrant information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This registry currently contains a list of 465 individuals, 35 of which were added within the past year. Additionally, there were 549 adult protective services inquiries and 128 registry cases processed in the past 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: There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through 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 are no anticipated costs with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment clarifying that department staff have accessibility during an investigation and service delivery.

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

(a) Initially: There are no anticipated costs with this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are funded through state general funds and the federal Social Services Block Grant.

(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 will not 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 administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

year? The administrative body does not project any new additional cost associated with the amendment to this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body does not project any new or additional cost associated with the amendment to this administrative 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 (+/-):

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.

(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.

(c) How much will it cost the regulated entities for the first year? There is no cost to regulated entities associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no cost to regulated entities associated with this administrative regulation.

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

Cost Savings (+/-):

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.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation through its administration of the registry.

(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), 209.032(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 administrative regulation will not generate any revenue in 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 administrative regulation will not generate any revenue in its subsequent years.

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

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](#).

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(New Administrative Regulation)**

105 KAR 1:455. In line of duty Hazardous Retirement Disability Benefits.

RELATES TO: KRS 16.505, 16.582, 61.505, 61.510, 61.542, 61.592, 61.610, 61.615, 61.640, 61.665, 61.685, 61.691, 78.510, 78.545, 78.5518, 78.5524, 78.5528, 78.5532

STATUTORY AUTHORITY: KRS 61.505(1)(g) and (3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.582 and 78.5524 establish hazardous disability retirement benefits for employees in hazardous positions who are disabled from an act in line of duty. This administrative regulation establishes the procedures for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits, and the appeal procedures if denied.

Section 1. Definitions.

(1) "Applicant" means a participant who has applied or is applying for ILOD disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524.

(2) "Dependent child benefit" means a retirement benefit payable to a dependent child as provided by KRS 16.582(6)(b) and (7)(b) and 78.5524(6)(b) and (7)(b).

(3) "Full-time student" means a person:

(a) Enrolled in a postsecondary program of study that meets the full-time student requirements of the institution in which he or she is enrolled;

(b) Enrolled in a continuing education or training program that meets the full-time requirements of the program or institution in which he or she is enrolled; or

(c) Enrolled in high school or a GED program that meets the full-time student requirements of the program or institution in which he or she is enrolled.

(4) "ILOD disability" means a form of disability retirement benefits that requires a disability that was due to an act in line of duty.

(5) "Retirement benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16).

(6) "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site.

(7) "Submit" means the employer required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.

(8) "Total and permanent ILOD disability" means a form of disability retirement benefits that requires a total and permanent disability that was due to an act in line of duty.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide independent, licensed physicians to serve as medical examiners pursuant to KRS 61.665 and 78.545, and additional persons to fulfill non-physician roles throughout the ILOD disability or total and permanent ILOD disability application and review process.

Section 3. Documentation of applicant's last day of paid employment.

(1) The applicant's last day of paid employment shall either be certified by the applicant's employer, or by a written statement filed by the applicant and corroborated by the reporting information received by the agency or the agency's third-party vendor from the applicant's employer.

(2) In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.

Section 4. Time period requirements.

(1)(a) An application or reapplication for ILOD disability or total and permanent ILOD disability shall be filed by the end of day twenty-four (24) months from the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing shall begin on the day after the last day of paid employment in a regular full-time position and shall end at the end of day on the 730th calendar day.

(2) If the application or reapplication is not filed within the time period prescribed by subsection (1) of this section, except as provided in subsection (3) of this section, then the application or reapplication is not timely, and the applicant shall not qualify for ILOD disability or total and permanent ILOD disability.

(3) If the end of any time period prescribed in this administrative regulation falls on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the time period shall be met if the application, documentation, form, or other requested information is filed or submitted no later than the end of day on the next business day following the weekend or holiday.

Section 5. Application or reapplication for ILOD disability or total and permanent ILOD disability.

(1) An application or reapplication for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582 and 78.5524 shall be made by completing and filing a valid Form 6000, Notification of Retirement, indicating the applicant's alleged disability is due to an act in line of duty. If available, a Workers' Compensation incident report shall be filed with the Form 6000.

(2)(a) Once an application or reapplication pursuant to subsection (1) of this section is received by the agency, the agency or its third-party vendor shall notify the applicant of the following additional requirements that shall be completed and filed no later than the end of day 180 calendar days from filing a valid Form 6000:

1. A valid Form 8035, Employee Job Description;

2. A valid Form 8040, Prescription and Nonprescription Medications;

3. All supporting objective medical evidence;

4. A valid Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information; and

5. If the Workers' Compensation incident report was not filed with the application or reapplication, then a Workers' Compensation incident report, or a valid Form 8480, Certification of Statement of Disability – Act in the Line of Duty, indicating one of the following:

a. The applicant is alleging that he or she is disabled due to an act in line of duty but cannot provide an incident report; or

b. The applicant is not alleging that he or she is disabled due to an act in line of duty. If the applicant indicates he or she is not alleging disability due to an act in line of duty, the application or reapplication will not be reviewed for ILOD disability or total and permanent ILOD disability.

(b) The agency or the agency's third-party vendor shall provide the applicant's employer with a Form 8030, Employer Job Description. The employer shall have until the end of day 180 calendar days from the date of the filed valid Form 6000, Notification of Retirement, to complete and submit the valid Form 8030.

(3) A reapplication for ILOD disability or total and permanent

ILOD disability based on the same claim of incapacity shall only be considered if accompanied by new objective medical evidence or new evidence concerning the act in line of duty that was not considered with previous applications.

(4)(a) Once all requirements established in subsection (1)-(3) of this section are on file or submitted, the agency or the agency's third-party vendor shall review and evaluate the documentation in accordance with KRS 61.665 and 78.545. Upon review, the agency or its third-party vendor may:

1. Request the applicant complete an independent medical or psychological evaluation in accordance with Section 6 of this administrative regulation; or

2. Request additional information including additional objective medical evidence, information about the applicant's job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports from the employer or applicant, and any other relevant information. If the employer or applicant fail to return the requested information by the end of day sixty (60) calendar days from the date the request for additional information was provided, the agency or the agency's third-party vendor shall make a determination using the information on file.

(b) If all requirements established in this section are not on file or submitted within the prescribed time period, the request for ILOD disability or total and permanent ILOD disability shall be void. The Form 6000, Notification of Retirement, shall still be reviewed for other benefits for which the applicant may be entitled.

Section 6. Medical or psychological examination requested at the expense of the agency.

(1) If the agency or the agency's third-party vendor recommends an independent medical or psychological examination, including physical or mental functional evaluations or assessments be conducted pursuant to KRS 61.665(2)(j) and 78.545 or KRS 61.665(3)(c) and 78.545, a Form 8025, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, will be provided to the applicant.

(a) The applicant shall complete and file a valid Form 8025 by the end of day sixty (60) calendar days from the date the Form 8025 is provided.

(b) Once the valid Form 8025 is filed, the applicant shall be notified in writing of the date, time, and location of the appointment. Records from the examination shall be used in determining eligibility for ILOD disability, total and permanent ILOD disability, or any other disability benefits for which the applicant may be entitled.

(c) If the applicant fails to file a valid Form 8025 within the prescribed time period, or fails or refuses to complete a scheduled medical or psychological examination, the agency or the agency's third-party vendor shall make a determination using the medical information on file.

(d) If the applicant fails to appear at the medical or psychological examination or fails to cancel the appointment within the time period required in the notice of appointment, the applicant shall be responsible for payment of any charges associated with the medical or psychological examination.

(2)(a) The agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as prescribed in 105 KAR 1:210, Section 8.

(b)1. To receive reimbursement for mileage, actual parking costs, and any actual bridge or highway toll charges, the applicant shall file a valid Form 8846, Travel Voucher for Independent Examination, and all necessary receipts no later than end of day fifteen (15) calendar days from the date of the examination or evaluation.

2. If the applicant fails to file the Form 8846 by the end of day fifteen (15) calendar days from the date of the examination or evaluation, the applicant shall not be eligible for reimbursement.

Section 7. Determining applicant's eligibility for ILOD disability or total and permanent ILOD disability.

(1)(a) An applicant may qualify for disability retirement benefits if he or she has sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1),

and 78.615(1). The service requirements shall be waived for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582(2)(a) and 78.5524(2)(a).

(b) To be eligible for any type of disability retirement allowance, the applicant shall receive a satisfactory disability determination pursuant to KRS 61.665.

(2) The agency or the agency's third-party vendor shall evaluate and determine eligibility for ILOD disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, and shall notify the applicant of the findings.

(3) Denial of ILOD disability, total and permanent ILOD disability, or both.

(a) The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one of the options listed in paragraph (b) of this subsection if:

1. The application is denied for ILOD disability, total and permanent ILOD disability, or both; and

2.a. The applicant did not meet the service requirements for hazardous disability or total and permanent disability pursuant to subsection (1) of this section; or

b. Is approved for hazardous disability or total and permanent disability.

(b)1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both.

(c) The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding ILOD disability, total and permanent ILOD disability, or both. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(4) Approval of ILOD disability and denial of total and permanent ILOD disability.

(a) If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one of the following:

1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

(b) The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding total and permanent ILOD disability. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(5) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability. If the application is denied for ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one of the following:

(a) File additional supporting information in accordance with Section 8 of this administrative regulation; or

(b) Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, hazardous disability, total and permanent disability, or all that are applicable.

(6)(a) The denial of ILOD disability or total and permanent ILOD disability may only be appealed if the applicant indicated on the valid Form 6000, Notification of Retirement, or the valid Form 8480, Certification of Statement of Disability – Act In the Line of Duty, that he or she was disabled due to an act in line of duty. Responses on the valid Form 8480 shall supersede responses on the valid Form 6000.

(b) The denial of total and permanent disability alone is not appealable.

(7) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, or total and permanent disability shall not affect any other benefits to which the applicant may be entitled.

Section 8. Additional Supporting Information.

(1)(a) Upon denial of ILOD disability or total and permanent ILOD disability in accordance with Section 7 of this administrative regulation, the agency or its third-party vendor shall provide the applicant with a Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information.

(b) The agency or its third-party vendor shall review and evaluate the additional supporting information upon receipt of the valid Form 8001 and additional supporting information, including additional medical information, information about his or her job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports, or other required documentation, when filed within the required time period.

(2) Once the agency or its third-party vendor completes the evaluation of the additional supporting information, the agency or its third-party vendor shall make a determination and notify the applicant of the findings.

(a)1. The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both, if:

a. The application is denied for ILOD disability, total and permanent ILOD disability, or both; and

b. Does not meet the service requirements for hazardous disability or total and permanent disability pursuant to Section 7(1) of this administrative regulation; or

c. Is approved for hazardous disability or total and permanent disability.

2. The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of appeal regarding ILOD disability, total and permanent ILOD disability, or both. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(b)1. If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

2. The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of the appeal regarding total and permanent ILOD disability. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(c) Except as provided in Section 7(6) of this administrative regulation, if the application is denied for ILOD disability, total and permanent ILOD disability, and hazardous disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the following:

1. Denial of the ILOD disability;
2. Total and permanent ILOD disability;
3. Hazardous disability; or
4. All that are applicable.

Section 9. Reapplication for ILOD disability or total and permanent ILOD disability while prior application or reapplication is pending.

(1) If a reapplication for ILOD disability or total and permanent ILOD disability that complies with KRS 16.582 and 78.5524 and Section 5 of this administrative regulation is filed while a prior application or reapplication is pending or within the statutory time

periods for appeal, the agency shall process according to the following:

(a) If there is a prior application or reapplication pending a determination, including when the applicant has submitted additional supporting information and such information is pending a determination as prescribed in Section 8 of this administrative regulation, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545, and shall not be reviewed.

(b) If there is a prior denial that is still within the statutory time period to appeal the determination and the applicant has not submitted additional supporting information as prescribed in Section 8 of this administrative regulation or requested an appeal in accordance with Section 16 of this administrative regulation, then:

1. The subsequently filed reapplication shall be found as a notice of intent to not submit additional supporting information or request an administrative hearing to appeal the previous denial determination; and

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication was filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section.

(c) If there is a prior denial, the applicant has requested an administrative hearing to appeal the denial, and it is prior to a Final Order of the Disability Appeals Committee (DAC), then:

1. The subsequently filed reapplication shall be found as a notice of intent to dismiss the request for an administrative hearing;

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section; and

3. The subsequently filed reapplication shall not be reviewed by the agency until thirty-one (31) calendar days after the entry of a Final Order of DAC dismissing the previously requested administrative hearing to appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(d)1. If there is a prior denial, a Final Order of DAC has been issued affirming the prior denial, and the claimant has requested an appeal of the Final Order or is within the statutory time period to do so, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The reapplication shall not be reviewed unless the applicant files one of the following by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section:

a. A written statement that he or she shall not appeal the Final Order of DAC; or

b. A final unappealable Order of a court with jurisdiction over the matter.

2. If the applicant files the documentation indicated in paragraph (d)1.a. or b. of this subsection, then the subsequently filed reapplication shall be reviewed by the agency thirty-one (31) calendar days after the entry of a Final Order of DAC, or after a final unappealable Order of a court with jurisdiction over the matter has been entered.

(2) If a subsequent reapplication for ILOD disability or total and permanent ILOD disability that complies with Section 5 of this administrative regulation is filed, the applicant may receive notification of how the reapplication shall be administered based on the status of the previously filed application or reapplication and in accordance with subsection (1) of this section.

Section 10. Voiding the Form 6000, Notification of Retirement.

- (1) The Form 6000, Notification of Retirement, shall be void if:
 - (a) The Form 6000 is invalid or withdrawn;
 - (b) The applicant is approved for benefits but fails to complete the requirements of Section 11 of this administrative regulation;
 - (c) The applicant died during the pendency of a determination, is approved for benefits after his or her death, and the beneficiary, representative of the deceased applicant's estate, or trustee fails to complete the requirements of Section 14 of this administrative regulation; or
 - (d) The Form 6000 does not result in the applicant receiving a retirement benefit and all applicable time periods to appeal as provided in Sections 7-9 of this administrative regulation have expired.
- (2)(a) If an applicant's Form 6000, Notification of Retirement, is void, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the most recently filed valid Form 2035, Beneficiary Designation, shall remain in full force and effect, except as provided in paragraph (b) of this subsection.
- (b) If the applicant was receiving an ongoing benefit based on a previously filed valid Form 6000, Notification of Retirement, then the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the Form 6000 indicated in this paragraph shall remain in full force and effect.

Section 11. Administration of benefits upon approval of ILOD disability or total and permanent ILOD disability.

- (1)(a) Once an applicant is approved for hazardous disability, total and permanent disability, ILOD disability, or total and permanent ILOD disability, the applicant shall complete all requirements to begin receiving the benefit for which he or she was approved no later than six (6) months from the date the notice of approval was provided in accordance with KRS 61.590(5)(b) and 78.545. Appealing the denial of ILOD disability or total and permanent ILOD disability, or both, does not affect this requirement.
- (b) If the applicant does not comply with paragraph (a) of this subsection, the applicant shall forfeit his or her right to the benefit for which he or she was approved, and shall have no right to appeal the forfeiture. This shall not preclude the applicant from:
 1. Filing a reapplication for hazardous disability, ILOD disability, or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, 105 KAR 1:210, and this administrative regulation; or
 2. Filing for or receiving any other benefits that he or she may be eligible to receive.
- (2) If the applicant received Social Security or Workers' Compensation benefits during the pendency of a determination, the applicant shall file detailed documentation of the benefits received in accordance with KRS 61.607, KRS 78.5530, and 105 KAR 1:210 Section 9.
- (3) The agency shall provide the applicant the monthly payment options, as provided in 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, available on the Form 6010, Estimated Retirement Allowance. An applicant that was awarded Social Security or Workers' Compensation benefits during the pendency of a determination shall not be provided the Form 6010 until he or she complies with the requirements of subsection (2) of this section.
- (a) The applicant shall complete and file a valid Form 6010 by the end of day six (6) months from the date the notification of approval for benefits was provided pursuant to KRS 61.590(5) and 78.545.
- (b)1. If the applicant selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, or a Spouse Beneficiary of an Eligible Rollover Distribution, selecting the option for payment.
2. If the applicant intends to have the funds rolled over directly into an IRA or other qualified plan, the applicant shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.
- (4)(a) Approved benefits shall be paid retroactive to the first of

the month following the month of the applicant's last day of paid employment in a regular full-time position.

(b) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the applicant's ILOD disability or total and permanent ILOD disability, as applicable, in determining the total retroactive payments owed and the monthly retirement allowance.

(5) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

(a) If the applicant did not receive any retirement benefits during the pendency of the approval, the applicant shall receive a payment for the retroactive period as prescribed in subsection (4) of this section.

(b)1. If the applicant received other retirement benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the applicant the difference between the retirement benefit which was paid to the applicant and the ILOD disability or total and permanent ILOD disability payment owed.

2. The applicant shall not change the beneficiary named or the payment option selected upon early, normal, or any disability retirement benefit, except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545.

(c) If the applicant received Social Security or Workers' Compensation benefits, the agency shall calculate payment in accordance with 105 KAR 1:210 Section 9.

(6) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the applicant shall receive any applicable backpay and begin receiving the monthly retirement allowance owed.

Section 12. Requirements for dependent child benefits.

(1) If dependent child benefits are payable to a dependent child, each eligible dependent child or his or her parent or guardian shall file the following documents:

(a)1. If the applicant is approved for ILOD disability, a valid Form 6456, Designation of Dependent Child; or

2. If the applicant is approved for total and permanent ILOD disability, a valid Form 6448, Designation of Dependent Child for Qualifying Total and Permanent Disability.

(b) If the dependent child is age eighteen (18) or over and a full-time student, written verification of full-time student status;

(c)1. If the dependent child is age eighteen (18) or over and receives federal Social Security disability benefits, a copy of the most recent statement issued by the Social Security Administration indicating the dependent child is disabled; or

2. If the dependent child is being claimed as a qualifying child for tax purposes due to the dependent child's total and permanent disability, a copy of the applicant's most recent tax return showing the dependent child is totally and permanently disabled for tax purposes, or duly appointed order of the court specifying the dependent child is a disabled dependent child of the applicant;

(d)1. A copy of the dependent child's birth certificate; or

2. A final order or decree of adoption which shall include his or her date of birth or other reliable proof of date of birth that may be used by the courts to verify date of birth; and

(e) If a dependent child is less than eighteen (18) years of age, a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

(2)(a) After the dependent child begins receiving dependent child benefits, the dependent child or the parent or guardian of the dependent child shall:

1. Notify the agency of the death or marriage of the dependent child;

2. If applicable, notify the agency if the dependent child ceases to be a full-time student;

3. If applicable, file a copy of the dependent child's written verification of full-time student status with the agency for each semester of study by the end of day thirty (30) calendar days

following the start and by the end of day thirty (30) calendar days following the end of each semester; and

4. If applicable, notify the agency if the dependent child's disability status changes.

(b) The dependent child and the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(5)(a) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the dependent child shall begin receiving the benefit owed.

(b) Approved benefits shall be paid retroactive to the first of the month following the month of the applicant's last day of paid employment in a regular full-time position.

(c) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the dependent child's benefits in determining the total retroactive payments owed and the monthly retirement allowance.

(d) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

1. If the dependent child did not receive dependent child benefits during the pendency of the approval, he or she shall receive a payment for the retroactive period as prescribed in paragraph (b) of this subsection.

2. If the dependent child received other dependent child benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the dependent child the difference between the dependent child benefit which was paid and the dependent child benefit owed.

Section 13. Distribution of payments.

(1) The agency shall not disperse payment until the requirements of either subsection (2) or (3) of this section are complete and on file.

(2)(a) Except as provided in subsection (3) of this section, to begin receiving payment, the applicant, beneficiary, representative of the deceased applicant's estate, trustee, dependent child, or parent or guardian of a dependent child, as applicable, shall authorize direct deposit to an account in a financial institution in the following way:

1. File a valid Form 6130, Authorization for Deposit of Retirement Payment, provide direct deposit information on the valid Form 6000, Notification of Retirement, or authorize direct deposit via the Self-Service Web site; and

2. Provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution, including any authorizations or information needed from the financial institution.

(b) At any time while receiving a monthly benefit, a recipient may change the designated institution by completing and filing a new valid Form 6130, Authorization for Deposit of Retirement Payment, or by updating the authorization for deposit of retirement payments on the Self-Service Web site maintained by the agency.

(3) If the applicant, beneficiary, dependent child, or parent or guardian of a dependent child, as applicable, does not currently have an account with a financial institution, or his or her financial institution does not participate in the electronic funds transfer program, the applicant may receive benefits by check. To receive benefits by check, an applicant, beneficiary, dependent child, or the parent or guardian of a dependent child, as applicable, shall file a valid Form 6135, Request for Payment by Check.

(4) The most recently filed valid Form 6130, Authorization for Deposit of Retirement Payment, authorization for deposit of retirement payments on the Self-Service Web site, or valid Form 6135, Request for Payment by Check, shall control the payment or electronic transfer designation of the payable benefits.

Section 14. Death during ILOD disability or total and permanent ILOD disability application process.

(1)(a) If an applicant who is not receiving any retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability; and

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file; and

(c) The time period requirements established in Sections 4-9 of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000 shall file the following within the time period requirements established by Sections 4-9 of this administrative regulation:

a. Any outstanding forms or documents required by Sections 5-9 of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. The beneficiary shall only have the rights specified in subparagraphs (a)-(d) of this paragraph if he or she files a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member.

a. The right to continue the application or reapplication whether or not additional forms or documentation are needed. The beneficiary shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;

b. The right to withdraw the application or reapplication whether or not additional forms or documentation are needed. If the Form 6008 is not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically. Withdrawal of the application or reapplication may impact the beneficiary as prescribed in Section 10(2) of this administrative regulation;

c. The right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and

d. The right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

3. If the beneficiary is an estate, then the beneficiary shall file a duly entered or certified court order from a court with jurisdiction appointing the representative of the applicant's estate within the time period requirements established by this subsection.

4. If the beneficiary does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(2)(a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;

(c) Lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000; and

(d) The time period requirements established by Sections 4-9 of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000 shall file the following within the time period requirements established in Sections 4-9 of this administrative regulation:

a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. The beneficiary shall file a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, to:

a. Continue the application or reapplication whether or not additional forms or documentation are needed. The beneficiary shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;

b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the Form 6008 is not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically.

c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and

d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

3. If the beneficiary does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(3)(a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;

(c) No monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000 or the designated beneficiary is the estate or trust; and

(d) The time period requirements established in Sections 4-9 of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the representative of the deceased applicant's estate or the trustee shall file the following no later than the time period requirements established in Sections 4-9 of this administrative regulation:

a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. The representative of the applicant's estate shall file a duly entered or certified court order from a court with jurisdiction appointing the person(s) as representative of the applicant's estate, and a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. Both requirements of this paragraph shall be on file to:

a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;

b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;

c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and

d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

3. The trustee shall file a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. The requirements of this paragraph shall be on file to:

a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative

of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;

b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;

c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and

d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

4. If the representative of the deceased applicant's estate or the trustee does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(4) If the beneficiary, representative of the deceased applicant's estate, or trustee provides all needed forms and documentation as provided in subsections (1)-(3) of this section and Section 11(2) of this administrative regulation, and benefits are approved:

(a) The agency shall provide the beneficiary with a Form 6810, Certification of Beneficiary. The beneficiary shall complete and file a valid Form 6810.

(b) If the applicant was not receiving a retirement benefit prior to his or her death, the agency shall provide the beneficiary with the payment options available on the Form 6010, Estimated Retirement Allowance. The beneficiary shall complete and file a valid Form 6010.

1. If the beneficiary, representative of the deceased applicant's estate, or trust is eligible for and selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, or a Spouse Beneficiary of an Eligible Rollover Distribution, indicating the payment option elected.

2. If the beneficiary, representative of the deceased applicant's estate, or trustee intends to have the funds rolled over directly into an IRA or other qualified plan, the beneficiary, representative of the deceased applicant's estate, or trustee shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(c) If the applicant was receiving a retirement benefit prior to his or her death, the beneficiary, the deceased applicant's estate, or trust shall receive benefits based on the payment option designated by the applicant.

(d) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the beneficiary, the deceased applicant's estate, or trust shall receive or begin receiving the benefit owed.

(5)(a) If the applicant received any retirement benefits while awaiting a disability determination of any kind, the beneficiary is not eligible to receive the difference between what the applicant already received and the disability back payments owed for the time period from the applicant's disability retirement date through the end of the month in which the applicant died. When this occurs, the deceased applicant's estate or trust shall receive any back payment owed for the time period indicated in this paragraph.

(b) If the applicant never received retirement benefits of any kind, the beneficiary is eligible to receive the disability back payments owed for the time period from the applicant's disability retirement date through the date of approval of the disability retirement benefit.

Section 15. Recipient's ILOD disability or total and permanent

ILOD disability discontinued upon review. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the agency or its third-party vendor determines:

(1) A recipient of total and permanent ILOD disability no longer meets eligibility requirements, then the agency or its third-party vendor shall determine if the recipient is qualified and remains eligible for ILOD disability in accordance with KRS 16.582 and 78.5524, and this administrative regulation; or

(2) A recipient of ILOD disability no longer meets eligibility requirements, then the agency shall determine if the recipient is qualified and remains eligible for early or normal retirement benefits in accordance with KRS 61.592 and 78.5520.

Section 16. Right to appeal.

(1) In accordance with KRS 61.665 and 78.545, a request for a formal hearing to appeal a denial or discontinuance determination shall be made by filing a written request containing a short and plain statement of the issues being appealed.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B and 105 KAR 1:215.

(3) The hearing officer presiding over an administrative hearing shall review the administrative record and any records introduced at the administrative hearing.

(a) The determination of other state and federal agencies' approval of benefits including the Kentucky Department of Workers' Claims and the Social Security Administration, may support a final determination if accompanied by underlying objective medical evidence or vocational evidence.

(b) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.

(4) The final determination shall not be bound by factual or legal findings of other state or federal agencies. The final determination shall be based on objective medical evidence and vocational records, including objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(5) Once a final determination is issued, the person who filed the appeal shall be notified of the final order of the Disability Appeals Committee (DAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

(6) All evidentiary filings made during an administrative hearing process to appeal the denial of an application or reapplication shall be included in the information reviewed in a subsequently filed reapplication.

Section 17. Incorporation by reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", updated June 2023;

(b) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member", updated November 2023;

(c) Form 6010, "Estimated Retirement Allowance", updated April 2021;

(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", updated June 2023;

(e) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", updated June 2023;

(f) Form 6130, "Authorization for Deposit of Retirement Payment", updated June 2023;

(g) Form 6135, "Request for Payment by Check", updated June 2023;

(h) Form 6448, "Designation of Dependent Child for Qualifying Total and Permanent Disability", updated November 2023;

(i) Form 6456, "Designation of Dependent Child", updated November 2023;

(j) Form 6810, "Certification of Beneficiary", updated April 2021;

(k) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", updated November 2023;

(l) Form 8002, "Certification of Application for Disability

Retirement and Supporting Medical Information", updated November 2023;

(m) Form 8025, "Authorization for Independent Medical or Psychological Examination and Release of Medical Information", updated November 2023;

(n) Form 8030, "Employer Job Description", updated June 2023;

(o) Form 8035, "Employee Job Description", updated November 2023;

(p) Form 8040, "Prescription and Nonprescription Medications", updated November 2023;

(q) Form 8480, "Certification of Statement of Disability – Act in the Line of Duty", updated November 2023; and

(r) Form 8846, "Travel Voucher for Independent Examination", updated November 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: December 6, 2023

FILED WITH LRC: December 7, 2023 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on February 21, 2024 at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than 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 until February 28, 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits, and the appeal procedures if denied.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits, and the appeal procedures if denied.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the procedures and requirements for applying or reapplying for in line of duty hazardous disability retirement benefits and for administratively

appealing a denial of an application or reapplication of those benefits in accordance with KRS 16.582 and 78.5524.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits in accordance with KRS 16.582 and 78.5524.

(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 Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3): the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation should not substantially alter the actions that the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System will have to take to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation should not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System to conform with KRS 61.505 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, particularly the in line of duty hazardous disability retirement benefit application or reapplication process, as well as the process for administratively appealing the denial of in line of duty hazardous disability retirement benefit applications.

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority should be negligible.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-): None

Expenditures (+/-): Unknown

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? Unknown

(d) How much will it cost the regulated entities for subsequent years? Unknown

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 (+/-): Unknown

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.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(New Administrative Regulation)**

105 KAR 1:470. Agency Communications.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation establishes how the Kentucky Public Pensions Authority shall communicate with members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance, and the procedures to change communication preferences.

Section 1. Definitions.

(1) "Agency account" means the member account or other agency issued account assigned to a COR.

(2) "COR" means a communications recipient; including a member, retired member, beneficiary, alternate payee, or recipient.

(3) "Electronic notification" means the process of delivering information, messages, or alerts through digital means, such as email, Short Message Service (SMS), Multimedia Messaging Service (MMS) notification, push notifications, or other digital communication methods.

(4) "Invalid email address" means an email address that is not valid or is no longer operational or associated with the COR, as verified by the agency through a COR's self-report, an audit, or other means.

(5) "Paperless communication" means communication provided by the agency in an electronic format through electronic notifications and the Self-Service Web site.

(6) "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site that allows a COR to access his or her agency account information and services related to that account.

(7) "Valid email address" means an email address the agency has on file for a COR that is operational and able to receive messages, or has not otherwise been deemed an invalid email address by the agency.

(8) "Valid physical mailing address" means the mailing address on file for a COR where he or she is able to receive U.S. mail, including: .

(a) A current street address;

(b) A Post Office box registered with the United States Postal Service; or

(c) A private mailbox registered with a commercial mail receiving agency established pursuant to the United States Postal Service regulation.

Section 2. Agency default to paperless.

(1) Beginning May 1, 2024, the agency shall default to paperless communications for all CORs who have a valid email address on file. The agency shall provide CORs with notification of the default to paperless communication and information on how to opt-out.

(2)(a) Any COR that has a valid email address on file as of May 1, 2024, that has not elected to opt-out in accordance with Section 5 of this administrative regulation, shall receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.

(b) A COR who has a valid email address on file but does not have a valid physical mailing address on file, shall not be given the ability to opt-out.

(3) Any COR that does not have a valid email address on file as of May 1, 2024, shall not receive paperless communication until the COR's communication preferences change in accordance with Section 6 of this administrative regulation.

Section 3. Email addresses.

(1)(a) If a COR needs to add or update his or her email address, the COR shall complete one of the following:

1. Update and save the email address on the Self-Service Web site;

2. Update the email address via phone by calling the agency and providing his or her agency issued personal identification number (PIN);

3. File a valid Form 2040, Change of Contact Information; or

4. Provide the email address on any valid filed agency form that has the option to update the email address.

(b)1. The most recent update to the COR's email address that complies with this subsection shall be the email address used for paperless communication.

2. The agency shall notify the COR of the update to his or her email address.

(2) If a participating employer provides an email address to the agency and the COR does not already have a valid email address on file, the agency shall use the email address provided by the employer until either:

(a) The email address is identified by the agency as invalid; or

(b) The COR changes the email address in accordance with subsection (1) of this section.

(3) The agency shall perform tests and audits to assist in determining if an email address is valid.

(4) A COR shall routinely be requested to confirm his or her email address on the Self-Service Web site.

(5) If the agency determines an email address is invalid for a COR receiving paperless communication, he or she shall stop receiving paperless communication. The agency shall send the COR notification of the change via U.S. mail, which shall include information on how to update his or her email address and how to change his or her communication preferences.

(6) The agency shall maintain an internal record of changes made to a COR's email address.

Section 4. Paperless communication notifications and access.

(1) The agency shall provide paperless communication through the Self-Service Web site messaging center to all CORs with a valid email address on file who have not elected to opt-out in accordance with Section 5 of this administrative regulation.

(2)(a) When a new message becomes available for a COR on the Self-Service Web site, he or she shall receive an electronic notification indicating that there is a message in the message center on the Self-Service Web site.

(b) If a COR has not set up a Self-Service Web site account, the COR's electronic notification shall include a hyperlink to view details of how to set up his or her Self-Service Web site account and access the message.

(c) A COR shall access the message by logging into the Self-Service Web site and viewing the message in the message center.

Section 5. Opt-out of paperless communications.

(1) To opt-out of paperless communications, a COR shall:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to opt-out;

(b) Update via phone by calling the agency, providing his or her agency issued PIN, and notifying the agency of his or her election to opt-out; or

(c) Update and save the opt-out preference in his or her Self-Service Web site account.

(2)(a) A COR that does not update his or her communication preference in accordance with this subsection shall continue to receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.

(b) The COR shall stop receiving paperless communication as soon as the request is processed by the agency, apart from limited exceptions as specified in Section 9 of this administrative regulation.

(c) The agency shall provide the COR with notice of the change in communication preferences.

Section 6. Changing to paperless communications.

(1) A COR who previously did not have a valid email address on file, shall complete one of the following to change his or her communication preferences to paperless communications:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to receive paperless communication and provided a valid email address;

(b) Update the email address via phone by calling the agency, providing his or her agency issued PIN and valid email address, and notifying the agency of his or her communication preferences;

(c) Update and save the preference to receive paperless communications in his or her Self-Service Web site account; or

(d) Provide the agency with a valid email address on any filed valid agency form that has the option to update the email address, except if the COR simultaneously elects to opt-out in accordance with Section 5 of this administrative regulation.

(2) A COR who previously elected to opt-out of paperless communications shall complete one of the following to change his or her communication preferences to paperless communications:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to receive paperless communication;

(b) Update via phone by calling the agency, providing his or her agency issued PIN, confirming the email address, and notifying the agency of his or her communication preference; or

(c) Update and save the preference to receive paperless communications in his or her Self-Service Web site account.

(3)(a) A COR that does not update his or her communication preference in accordance with this subsection shall not receive paperless communication from the agency, apart from limited exceptions as specified in Section 9 of this administrative regulation.

(b) The agency shall provide the COR with notice of the change in communication preferences.

Section 7. New CORs.

(1) Beginning May 1, 2024, a default to paperless communications for a new COR shall occur when:

(a) A member with a valid email address on file begins participating in the systems; or

(b) An agency account is created for a new beneficiary, new alternate payee, or other new recipient.

(2) The agency shall provide the persons indicated in subsection (1) of this section notification of the default to paperless communication, how to access the Self-Service Web site, and how to update paperless communication preferences.

(3) If the person indicated in subsection (1) of this section does not opt-out in accordance with Section 5 of this administrative regulation, he or she shall receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.

(4) Beginning May 1, 2024, when a member begins participating in the systems, or an agency account is created for a new beneficiary, new alternative payee, or other new recipient, and there is no valid email address on file, the agency shall provide the person with information on how to update his or her email address and communication preferences, and how to access the Self-Service Web site. The person shall not receive paperless communication from the agency until the person changes his or her communication preferences in accordance with Section 6 of this administrative regulation and provides a valid email address.

Section 8. Termination of employment with a participating employer.

(1) Except as provided in subsection (2) of this section, when the agency becomes aware that a member has terminated employment with a participating employer, the agency shall provide the member with notification indicating:

(a) The status of the member's current communication preference;

(b) If applicable, the valid email address currently on file for the member; and

(c) Information on how to update his or her email address and paperless communication preferences.

(2) If the member has requested an accumulated account balance refund in accordance with KRS 61.625(1) and 78.545, the agency shall not provide the member with the notification required in subsection (1) of this section.

Section 9. Exceptions to paperless communication opt-out. A COR who is not receiving paperless communication, but has a valid email address on file, shall at times receive general member information that is not specific to the COR through his or her email address.

Section 10. Exceptions to paperless communication. A COR who is receiving paperless communication shall, at times, receive communication via other methods when required by:

(1) Local, state, or federal law, including tax laws;

(2) Third-party vendors;

(3) Medicare or other hospital and medical insurance; or

(4) At the discretion of the agency.

Section 11. Updating a physical mailing address.

(1) For a COR to update his or her physical mailing address, the COR shall do one of the following:

(a) Update and save the physical mailing address on the Self-Service Web site;

(b) Update the physical mailing address via phone by calling the agency and providing his or her agency issued PIN and the updated physical mailing address; or

(c) Provide the physical mailing address on any filed agency form that has the option to update the physical mailing address.

(2) The most recent update to the COR's physical mailing address that complies with this subsection (1) of this section shall be the physical mailing address used for non-paperless communication.

Section 12. Guardianship or Power of Attorney communication.

(1) If a COR has a valid Guardianship Order, Conservatorship Order, or a Power of Attorney on file:

(a) All changes to the COR's agency account shall be made by filing the appropriate valid form or document; and

(b) No changes to the COR's agency account shall be made through the Self-Service Web site or by phone.

(2) Nothing in this section shall prevent the agency from providing paperless communications in compliance with Section 4 of this administrative regulation for a COR with a valid Guardianship Order, Conservatorship Order, or Power of Attorney on file.

Section 13. Incorporation by reference.

(1) Form 2040, Change of Contact Information, updated December 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: December 6, 2023

FILED WITH LRC: December 7, 2023 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on February 21, 2024 at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than 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 until February 28, 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. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes how the Kentucky Public Pensions Authority communicates with members, retired members, beneficiaries, and other recipients of a retirement allowance, and the procedures to change communication preferences.

(b) The necessity of this administrative regulation: To establish how members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance receive communication from the Kentucky Public Pensions Authority and the procedures to change communication preferences.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation is consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The procedures established in this administrative regulation assist the Kentucky Public Pensions Authority's ability to effectively, efficiently, and timely communicate with members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance.

(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 Kentucky Public Pensions Authority is affected by this administrative regulation. There are approximately 410,082 total members, retired members, beneficiaries, and other recipients of a retirement allowance that are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Public Pensions Authority will be required to comply with the requirements in this administrative regulation for communicating with members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the Kentucky Public Pensions Authority is negligible. There is no cost to members, retired members, beneficiaries, and other recipients of a retirement allowance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The provisions of this administrative regulation will allow the Kentucky Public Pensions Authority to provide communication quickly, efficiently, and effectively to its members, beneficiaries, alternate payees, and other recipients of a retirement allowance. The provisions of this administrative regulations will allow members, beneficiaries, alternate payees, and other recipients of a retirement allowance quick and easy access to communication from the Kentucky Public Pensions Authority, as well as flexibility in the way they receive their communication.

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

(a) Initially: \$100,000-\$400,000 to notify affected individuals in advance of the change to default paperless communication effective May 1, 2024. Most of the expected cost is associated with providing notifications via U.S. Mail.

(b) On a continuing basis: Negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance are subject to the same processes and procedures.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Negligible.

(d) How much will it cost to administer this program for subsequent years? Negligible.

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

Revenues (+/-): No revenue will be received by the Kentucky Public Pensions Authority as a result of this administrative regulation.

Expenditures (+/-): Negligible. There will be some administration costs for the Kentucky Public Pensions Authority as a result of this administrative regulation, but those costs will be minimal.

Other Explanation: Aside from the initial implementation cost for the Kentucky Public Pensions Authority, there is no meaningful fiscal impact associated with this administrative 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? Unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown.

(c) How much will it cost the regulated entities for the first year? \$100,000-\$400,000 to notify affected individuals in advance of the change to default paperless communication effective May 1, 2024. Most of the expected cost is associated with providing notifications via U.S. Mail.

(d) How much will it cost the regulated entities for subsequent years? Negligible.

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

Cost Savings (+/-): Unknown.

Expenditures (+/-):

Other Explanation: The cost savings are not currently known, but the Kentucky Public Pensions Authority anticipates cost savings over the long-term due to decreased postage usage.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact on the Kentucky Public Pensions Authority because the cost of implementation is expected to be less than \$500,000 and the Kentucky Public Pensions Authority anticipates that any initial implementation costs will be offset by cost savings over the long-term due to decreased printing and postage usage.

BOARDS AND COMMISSIONS
State Board of Accountancy
(New Administrative Regulation)

201 KAR 1:200. Board of Accountancy Scholarship Funding.

RELATES TO: KRS 325.240

STATUTORY AUTHORITY: KRS 325.240(7)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(7)(b) authorizes the Kentucky State Board of Accountancy to expend funds from its account created by KRS 325.250 to support scholarship programs that assist students enrolled in a Kentucky based college or university who also satisfy other criteria contained in an administrative regulation promulgated by the Board. This administrative regulation identifies the scholarship program that will be supported by the Board and establishes the selection criteria that will be used in connection with the scholarship funds awarded by the Board.

Section 1. Definitions. (1) "Board" is defined by 325.220(2).

(2) "CPA" means certified public accountant.

(3) "Educational Foundation of the Kentucky Society of Certified Public Accountants" means the 501(c)(3) organization established in 1961 by Kentucky Society of Certified Public Accountants to strengthen and advance the profession through enriched educational programs and scholarships.

(4) "Kentucky Society of Certified Public Accountants" means

the statewide, non-profit professional organization, founded in 1924, serving certified public accountants in public accounting firms, business, industry, government and education.

Section 2. Scholarship Funding.

(1) The Board's support of scholarship programs shall include financial contributions made directly to the scholarship program operated by the Educational Foundation of the Kentucky Society of Certified Public Accountants, which recognizes scholastic achievement and leadership qualities in students who plan to become CPAs.

(2) Decisions regarding the amount and timing of the Board's scholarship funding distributions to the program shall be made at the sole discretion of the Board, and such expenditures shall in no way hinder or interfere with the performance of the Board's regulatory purpose or statutory responsibilities.

Section 3. Administration of the Scholarship Program and Criteria for Awards.

(1) Program scholarships funded by the Board shall be administered by the trustees of the Educational Foundation consistent with the existing administrative guidelines of its scholarship program.

(2) Apart from its monetary contributions, the Board shall have no involvement in any administration of the scholarship program. Even with regard to scholarship awards funded by the Board, members of the Educational Foundation of the Kentucky Society of Certified Public Accountants shall continue to administer the program under its existing guidelines.

(3) As the one and only departure from the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants, to be eligible to receive scholarship funds provided by the Board, an applicant shall be enrolled in a Kentucky-based college or university.

(4) In all other respects, the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants governing applicant eligibility; the application process; selection criteria; the selection process; and award amounts, distribution and permitted use, shall be utilized in connection with scholarship awards funded by the Board's financial contributions.

(5) Information on each of those specific elements of the Educational Foundation's scholarship program can be found on the website of Kentucky Society of Certified Public Accountants, kycpa.org.

DAVID R. PRICE, President

APPROVED BY AGENCY: December 11, 2023

FILED WITH LRC: December 14, 2023 at 8:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, February 22, 2024 at 1:00 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day (11:59 p.m.) February 29, 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: KRS 325.240(7)(b) authorizes the Kentucky State Board of Accountancy ("Board") to expend funds from its account created by KRS 325.250 to support scholarship programs that assist students enrolled in a Kentucky based college or university who also satisfy other criteria contained in an administrative regulation promulgated by the Board. This administrative regulation identifies the scholarship program that will be funded by the Board and establishes the selection criteria that will be used to identify scholarship recipients.

(b) The necessity of this administrative regulation: To insure that the public, eligible college students, and prospective Certified Public Accountant (CPA) candidates are aware of the existence, parameters and guidelines of the scholarship funding offered by the Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.240(7)(b) authorizes the Kentucky State Board of Accountancy to expend funds from its account created by KRS 325.250 to support scholarship certain programs and to promulgate a regulation establishing the eligibility criteria and administration of the scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The scholarship funding established by this regulation is intended to enhance the number of college degrees in Kentucky, expand the pipeline of CPAs and financial professionals in the business marketplace, and open up to students the career opportunities open to those who pursue an accounting degree.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect students enrolled in Kentucky based colleges or universities demonstrating scholastic achievement and leadership qualities who plan to become CPAs. The number of such individuals is currently 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: No mandatory additional actions will be required. It will affect only those students wishing to apply for the Board's scholarship funding.

(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): Applicants may be awarded scholarship funding from the Board.

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

(a) Initially: The Board anticipates making an initial transfer of fifty thousand dollars (\$50,000) of Board funds to the scholarship program in conjunction with the promulgation of this administrative regulation. The amount of this expenditure will not interfere with the performance of the Board's other responsibilities.

(b) On a continuing basis: Future additional contributions may be made at the discretion of the Board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No general fund dollars will be expended in connection with this funding. The Board operates solely on a restricted use account in which sufficient funds exist to support the Board's financial contribution authorized by statute and implemented through this regulation. No additional funding sources will be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 or increased fee imposed by this proposed regulation.

(9) TIERING: Is tiering applied? The application of tiering is not required.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2) and KRS 325.240(7)(b)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The Board anticipates making an initial transfer of fifty thousand dollars (\$50,000) of Board funds to the scholarship program in conjunction with the promulgation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? While no specific contributions in future years have been established, to the extent sufficient funds exist, additional contributions may be made at the discretion of the Board.

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

Revenues (+/-): Neutral

Expenditures (+/-): Expenditures will increase through a \$50,000 transfer of funds from the Board's restricted account.

Other Explanation: No general fund dollars will be expended in connection with this funding.

(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? The Board anticipates making an initial transfer of fifty thousand dollars (\$50,000) of Board funds to the scholarship program in conjunction with the promulgation of this administrative regulation. Consistent with the enabling statute, the amount of this expenditure will not interfere with the performance of the Board's other responsibilities.

(d) How much will it cost the regulated entities for subsequent years? While no specific contributions in future years have been established, to the extent sufficient funds exist, additional contributions may be made at the discretion of the Board. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): Neutral.

Expenditures (+/-): Expenditures will increase through an initial one-time \$50,000 transfer of funds from the Board's restricted account.

Other Explanation: No general fund dollars will be expended in connection with this funding.

(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.

**GENERAL GOVERNMENT
Department of Agriculture
Office of Marketing
(New Administrative Regulation)**

302 KAR 45:020. Ginseng Growers Pilot Program.

RELATES TO: KRS 246.030, 246.650, 246.660, 246.990(9), 260.020, 260.030, 363.610, 50 C.F.R. Part 23

STATUTORY AUTHORITY: KRS 246.660, 260.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to administer a program for ginseng in Kentucky. This administrative regulation establishes a ginseng growing program.

Section 1. Registration. All persons wishing to sell, trade, or otherwise offer for transfer live ginseng plants or seeds in the Commonwealth of Kentucky shall first register with the KDA. A registrant shall submit a fully executed form "Ginseng Grower Registration". The KDA shall issue a grower ID number to registrants once the form is reviewed. The KDA may deny registration to persons with an infraction in the ginseng dealer program in the four (4) years prior to registration. A registration is valid for the remainder of the calendar year it was sub-mitted in.

Section 2. Site inspection and ginseng placement. Prior to sale or transfer of live plants or seed, the registrant shall have a physical inspection of the growing location in Kentucky. The KDA may inspect the site at any time after registration. Plants or seeds shall be located at least 300 feet from known wild ginseng populations.

Section 3. Records required. A registrant shall maintain records, for at least ten (10) years, of the following:

- (1.) Seed source and number of seeds or seed weight amounts, and a written receipts or invoices for all materials.
- (2.) Live plant source and planting numbers.
- (3.) A map of planting locations.
- (4.) Records of all sales of all ginseng material including live plants, seeds, and root material.

Section 4. Sales of Ginseng. All sales of live plants and seeds shall be from a registered grower. All harvest and sales of roots shall be in accordance with 302 KAR 45:010. Sales or purchases from any person not registered as a grower shall be subject to the penalties of 302 KAR 45:010, including underage plant possession. All sales of roots shall be declared as other than wild for certification.

Section 5. Material Incorporated by Reference

(1) The following material is incorporated by reference: "Ginseng Grower Registration" (November 2023).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at www.kyagr.com.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: December 14, 2023

FILED WITH LRC: December 15, 2023 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2024 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 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 writ-ten 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 February 29, 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 246.660

(b) The necessity of this administrative regulation: This regulation satisfies the statutory requirements of KRS 246.660

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory requirements of KRS 246.660 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 pilot program 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: 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 ginseng grower.

(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 fill out the form to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The time required to fill out the form, and record keeping requirements for sales.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A requester may lawfully grow and sell living ginseng in Kentucky.

(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 and ginseng program income.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fee is established.

(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 246.660

(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 does not anticipate any revenues due to 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? The KDA does not anticipate any revenue during the pilot program stage.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation based on possible participation and distance to drive for an initial inspection.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this regulation based on possible participation and distance to drive for an initial inspection. Registration does not require an inspection until a non-root sale takes place so estimates of costs are im-possible.

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 im-pact from an administrative regulation of five hundred thou-sand 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.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Drivers Licensing (New Administrative Regulation)

601 KAR 012:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence.

RELATES TO: KRS 186.412, 186.4122, 42 U.S.C. 11434a(2)

STATUTORY AUTHORITY: KRS 186.412, 186.4122

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.412 establishes procedures to allow applicants seeking to renew or obtain a duplicate operator's license when the applicant does not have an established and fixed nighttime residence. KRS 186.4122 establishes procedures for an applicant seeking an initial, renewal, or duplicate personal identification card when the applicant does not have an established and fixed nighttime residence. KRS 186.412 requires the Transportation Cabinet to promulgate administrative regulations establishing forms relating to both personal driver's licenses and personal identification cards.

Section 1. Definitions.

(1) "Homeless individual" means a person at least eighteen (18) years of age who lacks a fixed, regular, and nighttime residence.

(2) "Homeless youth" is defined by 42 U.S.C. § 11434a(2) and KRS 186.4122.

Section 2. Procedures for renewing an Operator's License, Duplicate Operator's License or Personal Identification Card.

(1) All applicants who meet the definition of homeless individual shall complete form TC 94-199 to renew an operator's license, receive a duplicate operator's license, or to receive an initial, renewal, or duplicate personal identification card. This form shall not be used for issuance of an initial operator's license.

(2) All applicants who meet the definition of homeless youth and who are between the ages of sixteen (16) and seventeen (17) years old but younger than eighteen (18) years of age, shall complete Form TC94-198 to receive a personal identification card.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "TC94-198", October 2023; and

(b) "TC94-199", September 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Driver Licensing, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on Transportation Cabinet's Web site at [https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-\(TC-94\).aspx](https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-(TC-94).aspx).

JIM GRAY, Secretary

MATTHEW COLE, Commissioner

APPROVED BY AGENCY: December 13, 2023

FILED WITH LRC: December 15, 2023 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, February 21, 2024, at 10:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days 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 February 29, 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 below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures whereby an applicant for a renewal or duplicate operator's license or an applicant for an initial, renewal, or duplicate personal identification card, who does not have an established and fixed nighttime residence of regular return may use a service providers address as proof of residency. It establishes procedures for a homeless youth who is at least sixteen (16) years of age but less than eighteen (18) years of age to obtain a personal identification card without a signature of a parent or guardian.

(b) The necessity of this administrative regulation: This regulation is needed to provide persons experiencing homelessness a means by which to obtain a credential.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation established the minimum standards needed to achieve the intent of KRS 186.412 and 186.4122.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes forms as set out in KRS 186.412 and 186.4122 for persons experiencing homelessness to complete in order to obtain a credential.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation would impact organizations that serve the homeless population, including the coalition for the homeless. As of January 2020, the US Department of Housing and Urban Development (HUD) estimated that on any given day, Kentucky has 4,011 people experiencing homelessness.

(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: Agencies currently providing services to the homeless population to assist then with obtaining a homeless ID, would complete the TC 94-199 instead of writing a letter on behalf of the homeless person.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will allow prompt notice of missing persons to be distributed to all electronic message boards on Kentucky interstates and parkways.

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

(a) Initially: There is no cost associated with implementing this

administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with implementing this administrative regulation, therefore there is no source of the funding to be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no cost associated with implementing this administrative regulation, therefore there is no need for an increase in fees or funding in order to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is required.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police and KSP sub-grantees; Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers; Environmental and Public Protection Cabinet; the Cabinet for Health and Family Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.412, KRS 186.4122, 49 C.F.R. (1978)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on the expenditures and revenues of a state or local government agency.

(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.

(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.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to generate costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate costs.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): No expenditures will be generated by this program.

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?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: N/A

(2) State compliance standards: N/A

(3) Minimum or uniform standards contained in the federal mandate: N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(New Administrative Regulation)

907 KAR 15:090. Crisis continuum services provided or mediated by an administrative service organization.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

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 a 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 a continuum of expanded behavioral health services that will be available to people experiencing a behavioral health crisis.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Medically necessary;

(2) Provided if a:

(a) Mobile crisis intervention service, by a community based mobile crisis intervention service provider that meets the requirements of Section 3 of this administrative regulation;

(b) Crisis observation stabilization service, by a crisis observation stabilization service unit that meets the requirements of Section 4 of this administrative regulation;

(c) Behavioral health crisis transport service, by a behavioral health crisis transport provider to a recipient that is alleged to be in a behavioral health crisis and that meets the requirements of Section 5 of this administrative regulation; and

(d) Residential crisis service, by a residential crisis stabilization unit or a community mental health center operating in accordance with the requirements established in 907 KAR 15:070 and Section 6 of this administrative regulation; and

(3) Mediated or coordinated by an administrative service organization.

(4)(a) This administrative regulation shall not become operational until an administrative service organization is contracted with the cabinet and has entered into a sufficient network of provider contracts.

(b) If necessary, the department and administrative service organization shall implement the administrative regulation on a

region-by-region basis as sufficient networks of providers are contracted.

Section 2. Administrative Service Organization (ASO) Requirements.

(1) Any provider providing services pursuant to Sections 1, 3, 4, or 5 of this administrative regulation shall be contracted with the contracted administrative service organization.

(2) An ASO shall be responsible for ensuring that all services established pursuant to this administrative regulation are available to a standard established by the department. This may include an enhanced standard for an ASO and a contracted provider relating to the coordination of continuing care for a recipient.

(3) An ASO may establish a reimbursement structure that involves directly reimbursing providers of services under Sections 3, 4, or 5 of this administrative regulation or may otherwise facilitate reimbursement by the department to providers.

(4) The department shall monitor the performance of the contracted ASO.

Section 3. Community-Based Mobile Crisis Intervention Services.

(1) A community-based mobile crisis intervention service (MCIS) shall include a dispatch:

(a) Of a mobile crisis team that is based in the community; and

(b) To the location of an individual experiencing a behavioral health crisis.

(2) A MCIS shall have the goal of:

(a) Alleviating symptoms of a behavioral health crisis;

(b) Harm reduction; or

(c) Safely transitioning an individual in an acute crisis to the appropriate level of care.

(3) Each delivery of a MCIS shall include:

(a) Conducting a crisis screening and assessment;

(b) Stabilization;

(c) De-escalation;

(d) Coordination with post-crisis follow-up services, which shall include referrals to health, social, and other support services as needed; and

(e) Follow-up with the individual.

(4) MCIS shall be:

(a) Available on a twenty-four (24) hours per day, seven (7) days per week, 365 days per year basis; and

(b) Provided outside of a hospital or other facility.

(5) A mobile crisis team providing MCIS shall consist of, at a minimum:

(a) A two (2) person team that shall actively participate in the crisis response;

(b) 1. One mobile crisis team member physically at the location of the individual; and

2. Other members of the mobile crisis team who may be available by telehealth or in the same physical location.

(6) A MCIS provider shall:

(a) 1. Be a licensed:

a. Community mental health center;

b. Behavioral health services organization; or

2. A state certified community behavioral health center; and

(b) Have:

1. Capacity to employ practitioners and coordinate service provision among rendering providers;

2. Capacity to provide the full range of services established pursuant to this section; and

3. Access to a board certified or board eligible psychiatrist on a twenty-four (24) hours per day, seven (7) days per week, 365 days per year basis.

(c) Be contracted with the ASO.

Section 4. Crisis Observation Stabilization Services.

(1) A crisis observation stabilization services unit (COSSU) provider shall:

(a) 1. Be licensed by the Office of Inspector General or registered with the department as a COSSU; or

2. Be licensed as a residential crisis stabilization unit; and

(b) Be contracted with the administrative service organization (ASO).

(c) Have:

1. Capacity to employ practitioners and coordinate service provision among rendering providers;
2. Capacity to provide the full range of services established pursuant to this section;
3. Administrative capacity to ensure quality of services;
4. A financial management system that provides documentation of services and costs;
5. Access to a prescriber twenty-four (24) hours a day, seven (7) days a week, each day of the year;
6. Staff knowledgeable in mental health disorders based on the population being served; and
7. The capacity to document and maintain individual case records.

(d) Offer the full range of services established pursuant to subsection (2) of this section.

(e) 1. Possess accreditation within one (1) year by one of the following:

- a. The Joint Commission;
- b. The Commission on Accreditation of Rehabilitation Facilities;
- c. The Council on Accreditation; or
- d. A nationally recognized accreditation organization.

2. If necessary, request and receive a one (1) time extension to complete the accreditation process if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.

(f) Agree to provide services in compliance with federal and state law regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(g) Provide services in order to:

1. Stabilize a crisis and divert an individual from a higher level of care;
2. Stabilize an individual and provide medication management, if applicable; or
3. Reintegrate an individual into the individual's community or other appropriate setting in a timely fashion;

(h) Be used when an individual:

1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and

2. Needs extended care beyond outpatient services; and

(2) A COSSU shall not:

(a) Be a part of a hospital;

(b) Contain less than three (3) or more than twenty (20) chairs, unless a waiver or other approval is received from the federal government;

(3) The department shall establish a staffing ratio and may stratify it by care needs according to a day, evening, or night shift format.

(4) Crisis observation stabilization services shall be limited to twenty-three (23) hours or less per event, and shall include the services established in this subsection.

(a) Except as specified in the requirements stated for a given service, the services covered may be provided for a mental health disorder.

(b) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder.

2. Not establish the presence of a specific type of disorder.

3. Establish the need for an in-depth assessment of the number and duration of risk factors including:

- a. Imminent danger and availability of lethal weapons;
- b. Verbalization of suicidal or homicidal risk;
- c. Need of immediate medical attention;
- d. Positive and negative coping strategies;
- e. Lack of family or social supports;
- f. Active psychiatric diagnosis; or
- g. Current drug and alcohol use.

4. Consist of an in person, or via telehealth as appropriate pursuant to the most recent version of 907 KAR 3:170, one-on-one encounter between the provider and recipient.

5. Be provided by:

- a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

- a. Establish the presence of a mental health disorder, a substance use disorder, or co-occurring disorders;
- b. Determine the individual's readiness for changes;
- c. Identify the individual's strengths or problem areas that may affect the treatment and recovery process; or
- d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service needed;

3. Include working with the individual to develop a Crisis Intervention and Prevention Plan (CIPP);

4. Not include psychological or psychiatric evaluations or assessments; and

5. Be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(d) A Crisis Intervention and Prevention Plan (CIPP):

1. Shall:

a. Involve assisting a recipient in creating an individualized plan for COSSU services needed;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level;

c. Be performed using a person-centered planning process;

d. Be directed by the recipient;

e. Include practitioners of the recipient's choosing; and

2. May include:

a. A mental health advanced directive being filed with a local hospital.

b. A safety plan.

c. A relapse prevention strategy or plan.

3. A CIPP shall be completed by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e) Individual therapy shall:

1. Be provided to promote the:

a. Health and well-being of the individual.

b. Restoration of a recipient to their best possible functional level from a mental health disorder, a substance use disorder, or co-occurring disorders;

2. Consist of:

a. An in person, or via telehealth as appropriate in accordance with 907 KAR 3:170, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified CIPP;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning;

4. Not exceed three (3) hours per day unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(f) Group therapy shall:

1. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified crisis intervention and prevention plan;

2. Be provided to promote the:

a. Health and well-being of the individual; and

b. Restoration of a recipient to their best possible functional level from a mental health disorder;

3. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most recent version of 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's CIPP;

4. Be provided to a recipient in a group setting:

- a. Of nonrelated individuals; and

- b. Not to exceed twelve (12) individuals in size;
- 5. Focus on the psychological needs of the recipients as evidenced in each recipient's CIPP;
- 6. Center on goals including building and maintaining healthy relationships, personal goal setting and the exercise of personal judgment;
- 7. Not include physical exercise, a recreational activity, an educational activity, or a social activity;
- 8. Not exceed three (3) hours per day unless additional time is medically necessary;
- 9. The group shall have a:
 - a. Deliberate focus; and
 - b. Defined course of treatment;
- 10. The subject of group therapy shall relate to each recipient within the group and within each recipient's health record; and
- 11. The group therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (g) Family Therapy shall:
 - 1. Consist of an in person, or via telehealth as appropriate pursuant to the most recent version of 907 KAR 3:170, encounter;
 - 2. Consist of scheduled therapeutic visits between the practitioner and the recipient and at least one (1) member of the recipient's family, provided in accordance with a recipient's identified crisis intervention and prevention plan;
 - 3. Address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment;
 - 4. Be provided to promote:
 - a. The health and wellbeing of the recipient; and
 - b. Restoration of a recipient to their best possible functional level from a mental health disorder;
 - 5. Not exceed three (3) hours per day per recipient unless additional time is medically necessary; and
 - 6. Be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (h) Peer Support Services:
 - 1. Shall be provided by a peer support specialist working under the supervision of an approved behavioral health practitioner and shall:
 - a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder to a recipient by sharing a similar mental health disorder in order to bring about a desired social or personal change;
 - b. Be an evidence based practice;
 - c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;
 - d. Be provided by a self-identified consumer, parent or family member of a child consumer of mental health disorder services who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230 or 908 KAR 2:240;
 - e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;
 - f. Be coordinated within the context of a comprehensive, individualized CIPP developed through a person-centered planning process;
 - g. Be identified in each recipient's CIPP; and
 - h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's CIPP.
 - 2. To provide peer support services, a COSSU shall:
 - a. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230 or 908 KAR 2:240;
 - b. Have the capacity to coordinate the provision of services among team members;
 - c. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;
 - d. Require individuals providing peer support services to recipients to not exceed thirty (30) hours per week of direct recipient contact; and
 - e. Require individuals providing peer support services to recipients in a group setting to not exceed eight (8) individuals within

any group at one (1) time.

- (i) Withdrawal management services shall:
 - 1. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;
 - 2. Be incorporated into a recipient's CIPP as appropriate according to the continuum of care described in the most current version of The ASAM Criteria;
 - 3. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;
 - 4. A recipient who is receiving withdrawal management services shall meet the:
 - a. Most current edition of diagnostic criteria for substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and
 - b. Current dimensional admissions criteria for withdrawal management level of care as found in The ASAM Criteria; and
 - 5. Withdrawal management services shall be provided by:
 - a. A physician;
 - b. A psychiatrist;
 - c. A physician assistant;
 - d. An advanced practice registered nurse; or
 - e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant.
- (j) Medication assisted treatment services shall:
 - 1. Be provided by an authorized prescribing provider who:
 - a. Is:
 - (i) A physician licensed to practice medicine under KRS Chapter 311; or
 - (ii) An advanced practice registered nurse (APRN); or
 - (iii) A physician assistant licensed to practice medicine under KRS Chapter 311;
 - b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065.
 - c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products, including any waiving or expansion of buprenorphine prescribing authority by the federal government; and
 - d. Has experience and knowledge in addiction medicine.
 - 2. Be conducted with associated behavioral health therapies that shall:
 - a.
 - (i) Be co-located within the same practicing site, or via telehealth as appropriate in accordance with 907 KAR 3:170, as the practitioner with a waiver pursuant to subparagraph 1.c. of this paragraph; or
 - (ii) Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in the biopsychosocial dimensions of alcohol or other substance use disorders;
 - b. Assess the need for treatment including:
 - (i) A full patient history to determine the severity of the patient's substance use disorder, and
 - (ii) Identifying and addressing any underlying or co-occurring disease or conditions, as necessary;
 - c. Educate the patient about how the medication works, including:
 - (i) The associated risks and benefits, and
 - (ii) Overdose prevention;
 - d. Evaluate the need for medically monitored withdrawal from substances;
 - e. Refer patients for higher levels of care if necessary; and
 - f. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.
 - 3. Be conducted with care coordination that shall include at minimum:
 - a. Referring the recipient to appropriate community services;
 - b. Facilitating medical and behavioral health follow-ups or linkage to current providers; and
 - c. Linking to appropriate levels of behavioral health treatment in order to provide ongoing support; and

4. The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 5. Behavioral Health Crisis Transportation.

(1) Provider requirements:

(a) A behavioral health crisis transport provider shall meet the state transportation benefit requirements established to obtain a motor carrier certification.

(b) A behavioral health crisis transport provider shall enroll with the department;

(c) A behavioral health crisis transport provider shall meet any relevant state or federal law relating to transporting recipients for profit;

(d) A behavioral health crisis transport provider shall be available twenty-four (24) hours each day, seven (7) days per week, and 365 days per year;

(e) Each behavioral health crisis transport provider vehicle shall be staffed by two (2) employees, one of which shall be a driver and one of which shall be a support staff person. Each provider staff person shall meet the training requirements in subsection (6) of this section;

(f) A behavioral health crisis transport provider shall provide and document staff training in the following amounts and on the following subjects:

1. Four (4) hours of evidence-based training on the de-escalation of conflicts;

2. Eight (8) hours of evidence-based training concerning behavioral health, which shall include:

a. Suicide risk assessment and intervention;
b. Opioid overdose response including the use of naloxone; and
c. Awareness of issues relating to mental health and substance use disorders; and

3. Cardiopulmonary resuscitation (CPR) certification; and

(g) A behavioral health crisis transport provider shall be contracted with the ASO.

(2) Service delivery:

(a) A behavioral health crisis transport provider may provide behavioral health crisis transportation to a recipient alleged to be in a behavioral health crisis;

(b) A mobile crisis team shall perform an assessment of a recipient prior to transport that complies with Section 3 of this administrative regulation;

(c) A recipient shall be transported to the nearest, most appropriate provider or facility;

(d) If the mobile crisis team assessment determines that the recipient requires a higher level of care, the recipient shall be transported, as appropriate, to the most appropriate level of care;

(e) A behavioral health crisis transportation service may be utilized to transport recipients to another facility for recipients who:

1. Are present in a facility, including a hospital emergency department; and

2. Meet a crisis observation stabilization level of care or higher;

(f) Except in the case of a recipient that requires a caregiver or legal guardian due to a cognitive impairment, an intellectual, physical, or developmental disability, a family member or unaccredited agent shall not ride in the vehicle with the recipient; and

(3) Prior authorization shall not be required for a behavioral health crisis transportation service.

Section 6. Reimbursement.

(1) The department shall establish and update a reimbursement table for each of the following service and provider categories. The reimbursement shall be available when billed through an ASO for:

(a) 1. An administrative services organization;

2. A community based mobile crisis intervention services provider;

3. A crisis observation stabilization services unit;

4. A behavioral health crisis transportation service provider; and

5. A residential crisis stabilization unit.

(b) For fee-for-service claims involving a community mental health center, reimbursement for mobile crisis intervention services and residential crisis stabilization unit services shall be governed by

and consistent with 907 KAR 1:045.

(2) The department may establish and increase a per diem rate for any service or provider in order to ensure provider availability and programmatic stability.

(3) Each reimbursement table shall be available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Section 7. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 8. 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.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 22, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19, 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 February 29, 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 Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding a continuum of care for behavioral health crisis services. This will involve implementing an administrative services organization, and providers who can provide community based mobile crisis intervention services, crisis observation stabilization services, behavioral health crisis transportation services, and any needed residential services related to a treated behavioral health crisis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish an updated, dynamic and responsive continuum of crisis 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 a coordinated grouping of services to meet behavioral health crisis care needs.

(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 a clear grouping of covered services, providers, and reimbursements related to behavioral health crises.

(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: DMS will establish 4 regions and contract an ASO for each region. The department will require staffing to correspond to a mobile crisis team response within 60 minutes in an urban area and 90 minutes in a rural area throughout each of the 4 regions. DMS anticipates that existing behavioral health services organizations and residential crisis stabilization units will expand to provide additional services as COSSUs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will need to contract or associate with an administrative services organization, and meet the regulatory requirements established for each provider type.

(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 experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to provide and receive reimbursement for an expanded community based continuum of mobile crisis services.

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

(a) Initially: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis: The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(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.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? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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 that the regulation will establish a new continuum of care for mobile crisis services. DMS anticipates that the entities will generate revenue from the new services available to be provided.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates that the regulation will continue to establish a new continuum of care for mobile crisis services. DMS anticipates that the entities will continue to generate revenue from the new services available to be provided 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 in the first year as a result of this new administrative regulation.

(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 new 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.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396w-6

(2) State compliance standards. States have the option under federal law to establish community-based mobile crisis intervention services.

(3) Minimum or uniform standards contained in the federal

mandate. 42 U.S.C. 1396w-6 establishes a state plan option to establish mobile crisis intervention services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

(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 Protection and Permanency
(New Administrative Regulation)**

922 KAR 1:145. Subsidized permanent custody.

RELATES TO: KRS 2.015, 199.011, 403.270-403.355, 600.020, 605.100, 605.130, 610.110(6), 610.125, 620.090, 620.140, 620.170, 45 C.F.R. 1355.34(b), 42 U.S.C. 673

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150, 620.180(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding pursuant to Titles IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes cabinet requirements and procedures to process requests for subsidized permanent custody pursuant to the federal Title IV-E guardianship assistance program and state guardianship assistance program, as authorized by 42 U.S.C. 673.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Case permanency plan" is defined by KRS 620.020(1).
- (3) "Child" means:
 - (a) "Child" as defined by KRS 199.011(4) and 600.020(9);
 - (b) An eighteen (18) year old enrolled with regular full-time attendance in high school, vocational school, or technical school;
 - (c) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or
 - (d) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (4) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (5) "Parent" is defined by 42 U.S.C. 675(2).
- (6) "Relative" means an individual related to a child by blood, marriage, or adoption.
- (7) "Subsidized permanent custody" means the guardianship

assistance program

authorized by 42 U.S.C. 673 and funded with Title IV-E and state general funds.

(8) "Successor caregiver" is defined as an individual named in the subsidized permanent custody agreement, or most recent amendment to the agreement, to serve as the caregiver in the event the original caregiver named in the subsidized permanent custody agreement dies or is incapacitated.

Section 2. Eligibility of Child. In order to qualify for assistance, a child shall:

(1) Be placed in the permanent custody of a relative or fictive kin caregiver by order of a court entered pursuant to KRS 403.270-403.355, 610.125, 620.027, or 620.140 if the order states that reunification or adoption are not in the child's best interest;

(2) Demonstrate a strong attachment to the relative or fictive kin caregiver;

(3) Have been placed in an approved relative or fictive kin foster home that received foster care maintenance payments for at least six (6) consecutive months, except for:

(a) A child whose sibling has met this requirement; or

(b) A child being placed with a successor caregiver pursuant to Section 8 of this administrative regulation;

(4) Be residing with a caregiver who meets the eligibility requirements established in Section 3 of this administrative regulation;

(5) Have been approved for subsidized permanent custody at age sixteen (16) or older in order to continue receiving payment after age eighteen (18) up to age twenty-one (21), except for a child who meets the exception to the age of majority; and

(6) Meet any additional eligibility requirements required for receipt of federal funding, as specified in 42 U.S.C. 673(d)(3).

Section 3. Eligibility of Caregiver.

(1) In order to qualify for assistance, a caregiver shall:

(a) Be a nonparental relative or fictive kin of a child who is eligible for assistance pursuant to Section 2 of this administrative regulation;

(b) Meet the requirements of a foster home established in 922 KAR 1:310 or 922 KAR 1:350;

(c) Have completed training required by 922 KAR 1:495 for a relative or fictive kin caregiver; and

(d) Have a strong commitment to permanently caring for the child.

(2) Prior to cabinet approval and the issuance of a new subsidized permanent custody agreement:

(a) Each caregiver and adult member of the caregiver's household shall have completed a background check pursuant to 922 KAR 1:490; and

(b) Each member of the caregiver's household who is age twelve (12) through age seventeen (17) shall have completed a DPP-157, submitted to a child abuse or neglect check, and been approved by the cabinet pursuant to 922 KAR 1:490.

Section 4. Subsidized Permanent Custody Agreement.

(1) Prior to approval of subsidized permanent custody, the eligible child shall consent in writing to the placement with the selected caregiver, if the child is:

(a) At least fourteen (14) years of age; and

(b) Competent, as determined by the cabinet, to provide informed consent to the placement and terms of the agreement.

(2) The cabinet shall confirm that all requirements established in this administrative regulation have been met and shall require the caregiver to complete the subsidized permanent custody agreement in order to receive payment pursuant to Section 5 of this administrative regulation.

Section 5. Payments and Benefits.

(1) If funding is available and the subsidized permanent custody agreement is completed and agreed to by the cabinet and the caregiver prior to the finalization of the permanent custody, taking into consideration the circumstances of the caregiver and the needs of the child, the payments shall:

(a) Be for an amount that is more than zero dollars (\$0), but does not exceed the foster care maintenance payment rate that would have been paid on behalf of the child in foster care; and

(b) Begin, effective as of the date that the order granting permanent custody is signed into court record.

(2) A child who is approved for subsidized permanent custody shall continue to be eligible for Medicaid coverage after the order granting permanent custody and subsidized permanent custody agreement are signed and finalized in accordance with applicable provisions of 907 KAR 20:005.

(3) A child or caregiver who is approved for subsidized permanent custody shall also be eligible to receive applicable assistance provided pursuant to 922 KAR 1:565.

(4) A child who is approved for subsidized permanent custody at age sixteen (16) or older shall be eligible for:

(a) Independent living services established in 922 KAR 1:340; and

(b) An educational and training voucher pursuant to 922 KAR 1:500.

(5) A request for payment of nonrecurring subsidized permanent custody expenses of \$2,000 or less shall be submitted to the cabinet for reasonable and necessary fees, court costs, and other expenses that were actually incurred and directly related to the placement of a child no later than twelve (12) months after the order granting permanent custody is entered into court record.

Section 6. Annual Contact.

(1) The cabinet shall make annual contact with the caregiver by mail, email, phone, home visit, or other cabinet method of contact to ensure that the:

(a) Child remains in the caregiver's home;

(b) Caregiver continues to provide care and support for the child; and

(c) Cabinet payments continue to meet the needs of the child.

(2) The cabinet may conduct a home or office visit after annual contact if:

(a) The caregiver requests a home or office visit;

(b) The needs of the child have changed;

(c) Attempts to update information by mail, email, or phone contact have failed; or

(d) The cabinet receives information that is contrary to the information provided by the caregiver or child during the annual contact.

Section 7. Suspension or Termination of Agreement and Payment.

(1) The cabinet may suspend payments pursuant to a subsidized permanent custody agreement if multiple attempts by the cabinet to make annual contact as established in Section 6 of this administrative regulation have failed due to lack of response from the caregiver or child.

(2) A caregiver shall notify the cabinet of any changes in circumstances that would change the payment amount or make the caregiver ineligible for payments pursuant to Sections 2 or 3 of this administrative regulation.

(3) The cabinet may alter the payment amount based on information provided to the cabinet if the amount is agreed upon by the cabinet and caregiver;

(4) The cabinet shall temporarily suspend subsidized permanent custody payments during the period of time the:

(a) Child reenters the custody of the cabinet, if applicable; or

(b) Cabinet has repeatedly requested documentation regarding financial responsibility from the caregiver.

(5) The cabinet shall resume payments suspended pursuant to this section of the administrative regulation if modifications to the agreement are agreed to by the cabinet and the caregiver or if the caregiver resumes financial support of the child.

(6) The cabinet shall terminate a subsidized permanent custody agreement if the:

(a) Cabinet determines that the:

1. Child is no longer receiving financial support from the caregiver;

2. Caregiver's legal responsibility to the child has ended;

3. Custody is reassigned to a successor caregiver; or

4. Appropriated funds are no longer available to support continuation of this program pursuant to Section 5 of this administrative regulation;

(b) Caregiver:

1. Requests termination; or

2. Becomes deceased; or

(c) Child:

1. Becomes deceased;

2. Marries;

3. Is inducted into military services;

4. Except for a child for whom commitment to the cabinet was extended or who meets the exception to the age of majority:

a. Obtains age eighteen (18); or

b. If still enrolled in high school, obtains:

(i) Age nineteen (19); or

(ii) High school graduation before age nineteen (19).

(7) Cabinet staff shall provide notice of a reduction, suspension, or termination of payments:

(a) Ten (10) calendar days in advance;

(b) In accordance with 922 KAR 1:320, Section 6; and

(c) To the caregiver at the caregiver's current or last known address.

(8) The notice shall include a statement of the reason or reasons for the reduction, suspension, or termination as determined by the cabinet.

(9) The effective date of the reduction, suspension, or termination shall be the date documented on the notice of intended action.

(10) If the caregiver has received a payment attributable to a time after the effective date of the reduction, suspension, or termination, the caregiver shall be obligated to repay the amount of that payment to the cabinet.

Section 8. Subsidized Permanent Custody Successor. In the event of the death or incapacity of a subsidized permanent custody caregiver, a new subsidized permanent custody agreement may be completed and agreed to by the cabinet and a successor caregiver if the successor caregiver:

(1) Is named in the subsidized permanent custody agreement or amendment that was effective before the date of death or determination of incapacity of the caregiver;

(2) Has been appointed by the court in a custody proceeding as the child's caregiver;

(3) And each member of the caregiver's household has completed the background checks required by Section 3(2) of this administrative regulation prior to cabinet approval and the issuance of a new subsidized permanent custody agreement; and

(4) Complies with the duties and responsibilities of the caregiver established in:

(a) This administrative regulation;

(b) A new subsidized permanent custody agreement, signed by the cabinet and the successor caregiver; and

(c) A subsidized permanent custody court order.

Section 9. Out-of-State Requests. The cabinet shall review out-of-state requests for subsidized permanent custody of a child in the custody of the cabinet considering the:

(1) Best interest of the child;

(2) Consent of the parent or parents, if applicable; and

(3) Extent of funds available.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 1, 2023

FILED WITH LRC: December 6, 2023 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 26, 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 February 19,

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 February 29, 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 cabinet requirements and procedures utilized in processing requests for subsidized permanent custody, a new guardianship assistance program through which a nonparental relative or fictive kin foster parent may receive permanent custody of a child and financial assistance in caring for the child.

(b) The necessity of this administrative regulation: Subsidized permanent custody is a new permanency option for children in the custody of the cabinet who have been placed in a relative or fictive kin foster home for over six months. Allowing this permanency option without the need for termination of parental rights will be attractive to some caregivers, relieve the caregiver and the cabinet of unnecessary administrative tasks associated with retaining the child in foster care, and will provide needed supports to the child and caregiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. Subsidized permanent custody is another permanency option and goal with its own services available to eligible children and caregivers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of permanency options and services available to children in the custody of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: 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 1, 2023, there were 437 children in the cabinet's custody placed in a foster home with a relative or fictive kin caregiver. Once a child has been in a relative or fictive kin foster home for at least six consecutive months, they may be eligible for subsidized permanent custody.

(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 child in the custody of the cabinet who has been placed in a relative or fictive kin foster home for over six consecutive months and their caregiver may be eligible for subsidized permanent custody. The requirements established in this administrative regulation shall be met.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to children or their caregivers that are eligible for subsidized permanent custody.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The caregiver will receive permanent custody of the child, less involvement by the cabinet, and financial assistance and supports in caring for the child. This is a new permanency option and goal for children in the state's custody.

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

(a) Initially: The cabinet is already providing a per diem to foster homes that may be eligible for subsidized permanent custody; however, the cabinet does anticipate additional relative or fictive kin caregivers becoming foster parents and receiving a per diem and eventually subsidized permanent custody payments. Initially, there will not be a large cost associated with this program, but over time the number of caregivers is expected to rise. For this reason, the cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

(b) On a continuing basis: The cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E guardianship assistance program funds, General Funds, and restricted 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 are no fees associated with this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation, the requirements, and processes are applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 673 provides states with the option of implementing a state guardianship assistance program.

(2) State compliance standards. KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 673 contains standards for states that choose to exercise the guardianship assistance program option.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements than those contained in federal standards.

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, is administering this new guardianship assistance program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 673, KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet is already providing a per diem to foster homes that may be eligible for subsidized permanent custody; however, the cabinet does anticipate additional relative or fictive kin caregivers becoming foster parents and receiving a per diem and eventually subsidized permanent custody payments. Initially, there will not be a large cost associated with this program, but over time the number of caregivers is expected to rise. For this reason, the cabinet anticipates the cost of this program to be approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

(d) How much will it cost to administer this program for subsequent years? Approximately \$7 million in General Funds and approximately \$2.5 million in federal and restricted funds each year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities, but rather additional supports provided to them.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities, but rather additional supports provided to them.

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, but will provide additional supports to children and their caregivers.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 11, 2023

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 11, 2023 at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Lewis, Co-Chair, called the meeting to order, and 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: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Rebecca Gilpatrick, Miles Justice, Kentucky Higher Education Assistance Authority; Will Adams, Chris Chamness, Personnel Cabinet; Joe Ellis, Christi LeMay, Board of Optometric Examiners; Dr. John Park, Michelle Shane, Board of Veterinary Examiners; Kelly Jenkins, Jeffery Prather, Board of Nursing; Stephen Curley, Board of Physical Therapy; Hank Cecil, Marc Kelly, Board of Social Work; Louanna Aldridge, Tony Hatton, Department for Environmental Protection; Abigail Gall, Shaun Orme, Department of Insurance; Jamie Eads, Travers Manley, Hans Stokke, Jennifer Wolsing, Horse Racing Commission; Julie Brooks, Jennifer Burt, Leslie Cobb, Holly Lafavers, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Katie Marks, Phyllis Millsbaugh, Rachael Ratliff, Department for Behavioral Health, Michelle Sanborn; Children's Alliance.

Administrative Regulations Reviewed by this Subcommittee:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:
Division of Student and Administrative Services: Teacher
Scholarship Loan Program**

011 KAR 008:030. Teacher scholarships. Rebecca Gilpatrick, director of student aid, and Miles Justice, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 6, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**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. Will Adams, staff attorney, and Chris Chamness, deputy commissioner, represented the cabinet.

101 KAR 002:210. 2024 Plan Year Handbook for the Public Employee Health Insurance Program.

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:005. Fees, fines, and forms. Dr. Joe Ellis, vice president, and Christi LeMay, executive director, represented the board.

In response to questions by Co-Chair West, Dr. Ellis stated that the fee increases were the first by the agency in three (3) to four (4) years. The fee increases were currently being used by the agency, but had not been codified.

A motion was made and seconded to approve the following amendments: to amend the TITLE and the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, 5, 9 through 11, and 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Veterinary Examiners

201 KAR 016:510. Fees for veterinarians. Dr. John Park, chair, and Michelle Shane, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 5 through 7 and 9 to comply

with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:512. Fees for veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 through 6 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:516. Fees – other fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:701. Standards for medical records.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:702. Standards for veterinary surgery.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 2 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:056. Advanced practice registered nurse licensure and certification requirements. Jeffrey Prather, general counsel, represented the board.

201 KAR 020:220. Nursing continuing education provider approval.

A motion was made and seconded to approve the following amendment: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Board of Physical Therapy

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. Stephen Curley, executive director, represented the board.

Board of Social Work

201 KAR 023:055. Inactive status of license. Hank Cecil, chair, and Marc Kelly, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Underground Storage Tanks

401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement. Louanna Aldridge, environmental science consultant, and Tony Hatton, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 8, 9, 12, 15, and 21 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were

approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:590. Annual report on providers prescribing medication for addiction treatment. Abigail Gall, executive advisor, and Shaun Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Horse Racing Commission: Sports Wagering

809 KAR 001:002. Service provider licensing. Jamie Eads, executive director; Travers Manley, deputy general counsel; and Hans Stokke, sports wagering director, represented the commission.

Senator Thayer stated that the commission deserved credit for the implementation of sports wagering, which was in line with legislative intent.

In response to a question by Co-Chair West, Ms. Eads stated that these administrative regulations would be reviewed by the commission as needs arose, but that no other sports wagering administrative regulations were anticipated from the commission at this time.

Representative Grossberg stated that the implementation and continued growth of sports wagering was a bipartisan issue for the current administration and legislature.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 5 to list the commission's criteria for approving temporary licensure; and (3) to amend Section 8 and incorporated material to correct a form number. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 001:003. Occupational licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 7, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 5 to list the commission's criteria for approving transfer of a temporary license; and (3) to amend Section 6 to include the submission information for an applicant for an employee race and sportsbook license, an information services provider license, and a key employee license. Without objection, and with agreement of the agency, the amendments were approved.

Sports Wagering: Technical Criteria

809 KAR 010:001. General provisions.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:002. Standards for sports wagering.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 to comply with

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the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:003. Technical requirements and oversight.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:004. Sports wagering accounts.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:005. Licensed premises.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) include the commission's criteria to approve moving kiosks; and (b) require a Certificate of Occupancy for an operator's license; (3) to amend Section 6 to include the commission's criteria for kiosk location; and (4) to amend Section 10 to clarify that surveillance system inspections shall be at least quarterly. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:006. Audit and internal control standards.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 19 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 5 to include the commission's criteria for prohibiting records destruction; and (3) to amend Section 16 to clarify that layoff wagers shall be reported to the commission daily. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:007. Responsible gaming and advertising.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to list the commission's criteria to approve a third party to review a responsible gaming program. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:008. Disciplinary actions and hearings.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing: General

810 KAR 002:100. Self-exclusion.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 2 to state that public notice approval shall be based on the notices "content, visibility, and

readability"; and (3) to amend Section 3 to state that self-exclusion information shall be submitted to the commission based on completeness and ease of dissemination by the commission to the associations. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing: Licensing

810 KAR 003:010. Licensing of racing associations.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7, 10, 11, 13 through 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Maternal and Child Health

902 KAR 004:120. Health Access Nurturing Development Services (HANDS) Program. Julie Brooks, regulation coordinator; Leslie Cobb, program administrator; and Holly LaFavers, HANDS supervisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to revise the definition for "local implementing agency" to align with the provider qualifications established in Section 3; (2) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 3 to remove provisions that are no longer needed. Without objection, and with agreement of the agency, the amendments were approved.

Food and Cosmetics

902 KAR 045:065. Tattooing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, 6, 9, 12, 14, 16, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 18 to add a link to material incorporated by reference on the agency's Web site; and (2) to amend Sections 1 through 3, 5, 8, 9, and 13 through 15 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 for Medicaid Services: Payment and Services

907 KAR 003:310. Community health worker services and reimbursement. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that the proposed increase in per diem rates for Level I and Level II PRTF services in this amendment would be comparable to those in surrounding states.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 009:010E. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Mental Health

908 KAR 002:300. Kentucky problem gambling assistance account. Phyllis Millspaugh, assistant director, and Rachael Ratliff, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add treatment of addictions to the list of purposes for which funding may be requested, as established in KRS 230.826. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the December 11, 2023, subcommittee agenda:

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.

KENTUCKY COMMISSION ON HUMAN RIGHTS

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

104 KAR 001:080. Guidelines on fair housing.

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

FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules

105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities.

BOARDS AND COMMISSIONS: Board of Nursing

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

201 KAR 020:065. 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.

201 KAR 020:215. Continuing competency requirements.

201 KAR 020:700. Medication aide training programs and credentialing of medication aides.

Board of Social Work

201 KAR 023:160. Temporary permission to practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board. Michelle Sanborn, president, Children's Alliance, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Ms. Sanborn stated that the Children's Alliance was concerned that the overbroad definition for electronic social work service could create barriers for

potential practitioners to join the social work field. In the board's Statement of Consideration, the board did not provide comprehensive responses to comments from the Children's Alliance submitted during the public comment period.

In response to a question by Co-Chair Lewis, Mr. Kelly stated that the board's intent was to increase flexibility to licensed social workers regarding telehealth access for their clients. The Children's Alliance's requested amendments would make 201 KAR 023:170 overly restrictive.

In response to questions by Senator Raque Adams, Mr. Kelly stated that the board's Statement of Consideration response, which indicated that the board would not be adopting amendments requested by the Children's Alliance, was sufficient. New social workers would not be prohibited from receiving licensure.

In response to a question by Senator Thayer, Ms. Sanborn requested deferral of these administrative regulations to allow more time for stakeholder discussion.

In response to questions by Co-Chair West, Mr. Kelly stated that there were no other administrative regulations regarding social work telehealth services, and the current administrative regulation had been in place since 2000. The amendment to 201 KAR 023:170 would establish parameters for electronic social work services.

In response to a question by Co-Chair West, Ms. Sanborn agreed that a basic framework was needed, but the Children's Alliance was concerned about the expansion of telehealth therapies to potentially include facsimile or artificial intelligence.

In response to a question by Co-Chair West, Mr. Cecil stated that the board was addressing concerns from their members and had consulted legal counsel in the development of these administrative regulations. The board needed flexibility regarding the use of expanding technology.

In response to questions by Representative Frazier Gordon, Mr. Kelly stated that legislation that passed during the coronavirus (COVID-19) state of emergency had been sufficient at the time, but the board now needed to provide more guidance for social workers regarding evolving technology. Mr. Cecil stated that while initial contact could be made between a potential client and a social worker via email or text, any other technology would fall outside of the board's provisions without these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Kelly agreed to defer consideration of 201 KAR 023:160 and 023:170. A motion was made by Senator Thayer and seconded by Representative Frazier Gordon to defer consideration of these administrative regulations to the January 2024 subcommittee meeting. Without objection, and with agreement of the agency these administrative regulations were deferred.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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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: 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 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.

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.

Office of Inspector General

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

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.

The subcommittee adjourned at 1:55 p.m. The next meeting of this subcommittee was tentatively scheduled for January 8, 2024, 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 HEALTH SERVICES
Meeting of December 13, 2023

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting on December 13, 2023, having been referred to the Committee on November 1, 2023 and December 6, 2023, pursuant to KRS 13A.290(6):

November 1, 2023

201 KAR 002:020 Proposed
201 KAR 002:050 Proposed
201 KAR 002:105 Proposed
201 KAR 002:205 Proposed
201 KAR 002:225 Proposed
201 KAR 002:240 Proposed
201 KAR 002:320 Proposed
201 KAR 002:340 Proposed
201 KAR 002:390 Proposed
201 KAR 020:620 Proposed
201 KAR 022:170 Proposed
900 KAR 006:080 Proposed
902 KAR 020:300 Proposed

December 6, 2023

201 KAR 002:040 Proposed
202 KAR 007:550 Proposed
902 KAR 100:019 Proposed
902 KAR 100:050 Proposed
902 KAR 100:058 Proposed
902 KAR 100:065 Proposed
902 KAR 100:165 Proposed
902 KAR 100:185 Proposed
902 KAR 100:195 Proposed
902 KAR 100:200 Proposed
908 KAR 002:300 Emergency

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 045:190 Emergency

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the December 13, 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

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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

G - 11

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

G - 21

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

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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

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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:			Replaced	660	12-5-2023
* Statement of Consideration not filed by deadline			505 KAR 001:210E	49 Ky.R. 2211	5-15-2023
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			505 KAR 001:220E	49 Ky.R. 2213	5-15-2023
*** Withdrawn before being printed in Register			701 KAR 008:010E	49 Ky.R. 984	10-13-2022
IJC Interim Joint Committee			Replaced	1924	7-5-2023
(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.			701 KAR 008:020E	49 Ky.R. 989	10-13-2022
			Replaced	1928	7-5-2023
			701 KAR 008:030E	49 Ky.R. 998	10-13-2022
			Replaced	1167	7-5-2023
			701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
			Replaced	1935	7-5-2023
			701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
			Replaced	1216	7-5-2023
			787 KAR 001:090E	49 Ky.R. 1571	12-22-2022
			Replaced	2096	8-1-2023
			787 KAR 001:100E	49 Ky.R. 1575	12-22-2022
			806 KAR 017:570E	49 Ky.R. 2215	5-15-2023
			As Amended	50 Ky.R. 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
			Replaced	177	12-13-2023
			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
			As Amended	1456	12-13-2023
			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
016 KAR 002:240E	50 Ky.R. 302	6-29-2023			
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016 KAR 009:080E	49 Ky.R. 2200	4-26-2023			
As Amended	50 Ky.R. 596	8-8-2023			
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016 KAR 009:100E	49 Ky.R. 2205	4-26-2023			
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030 KAR 010:120E	50 Ky.R. 321	6-29-2023			
031 KAR 004:196E	50 Ky.R. 582	8-15-2023			
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023			
Replaced	2272	7-24-2023			
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Replaced	2273	7-24-2023			
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105 KAR 001:148E	50 Ky.R. 1014	10-11-2023			
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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			
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505 KAR 001:140E	49 Ky.R. 1569	1-13-2023			
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907 KAR 020:075E Replaced	49 Ky.R. 2240 50 Ky.R. 698	5-15-2023 9-27-2023	030 KAR 010:120 As Amended	50 Ky.R. 509 1043	
907 KAR 020:100E Replaced	49 Ky.R. 2243 50 Ky.R. 700	5-15-2023 9-27-2023	031 KAR 004:196 Amended	50 Ky.R. 717 1251	
908 KAR 002:300E Am Comments	50 Ky.R. 592 1030	7-31-2023 10-12-2023	032 KAR 001:020 Amended	50 Ky.R. 73 798	
922 KAR 001:360E Am Comments	49 Ky.R. 2248 50 Ky.R. 387	5-15-2023 7-13-2023	032 KAR 001:030 Amended	50 Ky.R. 74 798	
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011 KAR 005:001 Amended	50 Ky.R. 66 1034		032 KAR 001:050 Amended	50 Ky.R. 76 799	
011 KAR 008:030 Amended	50 Ky.R. 853 1466		032 KAR 004:020 Amended	50 Ky.R. 232 401	
011 KAR 015:040 Amended	50 Ky.R. 69		032 KAR 002:020 Amended	50 Ky.R. 401 1044	
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016 KAR 002:240 As Amended	50 Ky.R. 490 1038		032 KAR 002:060 Amended	50 Ky.R. 409 1048	
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030 KAR 010:070 As Amended	50 Ky.R. 502 1042		104 KAR 001:050 Amended	50 Ky.R. 82	
030 KAR 010:080 As Amended	50 Ky.R. 504 1042		104 KAR 001:080 Amended	50 Ky.R. 84	
030 KAR 010:090 As Amended	50 Ky.R. 505 1042		104 KAR 001:100 Amended	50 Ky.R. 86	
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105 KAR 001:148	50 Ky.R. 1207		201 KAR 002:390		
105 KAR 001:215			Amended	50 Ky.R. 110	
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105 KAR 001:220			201 KAR 005:002	49 Ky.R. 1371	
Amended	49 Ky.R. 2342		Am Comments	1943	
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105 KAR 001:270			201 KAR 005:005	50 Ky.R. 989	
Amended	50 Ky.R. 1173		As Amended	1468	
105 KAR 001:365			201 KAR 005:055		
Amended	49 Ky.R. 1537		Amended	49 Ky.R. 1974	
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105 KAR 001:470	50 Ky.R. 1622		201 KAR 009:067	50 Ky.R.	
106 KAR 001:131			201 KAR 016:510		
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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205.2005	921 KAR 003:027	216.765	902 KAR 020:036
205.8451	907 KAR 001:044	216.765	921 KAR 002:015
	907 KAR 001:061	216.785 – 216.793	902 KAR 020:036
	907 KAR 015:005	216.789	902 KAR 020:048
209	922 KAR 005:070		902 KAR 020:086
	922 KAR 005:120	216.793	902 KAR 020:048
209.020	921 KAR 002:015		902 KAR 020:086
209.030	902 KAR 020:036	216.597	902 KAR 020:036
	902 KAR 020:048	216A.080	902 KAR 020:036
	902 KAR 020:086		902 KAR 020:048
209.032	902 KAR 020:300		902 KAR 020:086
	902 KAR 020:036	216B	921 KAR 002:015
	902 KAR 020:048	216B.010	902 KAR 020:036
	902 KAR 020:086	216B.040	902 KAR 020:036
	902 KAR 020:300	216B.042	902 KAR 020:036
210	908 KAR 002:300	216B.045 – 216B.130	902 KAR 020:036
210.366	201 KAR 036:030	216B.450	705 KAR 004:231
210.410	908 KAR 002:300	216B.455	705 KAR 004:231
211.180	902 KAR 100:185	216B.990	902 KAR 020:036
	902 KAR 100:195	217.215	201 KAR 002:165
	902 KAR 100:200	218A.171 – 218A.172	201 KAR 020:057
	902 KAR 004:120	218A.202	201 KAR 020:057
211.185	908 KAR 002:300	218A.205	902 KAR 020:300
211.332	201 KAR 036:045		201 KAR 020:057
211.334	201 KAR 036:045		201 KAR 020:215
211.336	201 KAR 036:045		201 KAR 002:050
211.338	201 KAR 036:045	216B.010	900 KAR 006:075
211.689	902 KAR 004:120	216B.010 – 216B.130	900 KAR 006:020
211.842 – 11.852	902 KAR 100:019	216B.015	900 KAR 006:075
	902 KAR 100:040		900 KAR 006:080
	902 KAR 100:050		902 KAR 100:185
	902 KAR 100:058	216B.020	900 KAR 006:080
	902 KAR 100:065	216B.040	900 KAR 006:075
	902 KAR 100:165	216B.061	900 KAR 006:080
	902 KAR 100:185	216B.062	900 KAR 006:075
	902 KAR 100:195	216B.090	900 KAR 006:075
	902 KAR 100:200	216B.095	900 KAR 006:075
211.990	902 KAR 100:019	216B.115	900 KAR 006:075
	902 KAR 100:040	216B.178	900 KAR 006:020
	902 KAR 100:050	216B.455	900 KAR 006:075
	902 KAR 100:058	216B.990	900 KAR 006:075
	902 KAR 100:065		900 KAR 006:080

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217.015	201 KAR 002:225		401 KAR 045:250
	902 KAR 045:190E	224.43-345	401 KAR 103:005
217.015	301 KAR 001:155		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
224.10-470	401 KAR 042:250		201 KAR 027:016
224.20-100	401 KAR 051:010	229.155	201 KAR 027:005
224.20-110	401 KAR 051:010		201 KAR 027:011
224.20-120	401 KAR 051:010		201 KAR 027:016
224.40	401 KAR 045:020	229.171	201 KAR 027:005
	401 KAR 045:025		201 KAR 027:008
	401 KAR 045:030		201 KAR 027:011
	401 KAR 045:040		201 KAR 027:012
	401 KAR 045:050		201 KAR 027:016
	401 KAR 045:080	230	809 KAR 001:002
	401 KAR 045:100		809 KAR 010:001
	401 KAR 045:105		809 KAR 010:002
	401 KAR 045:140		809 KAR 010:002
	401 KAR 045:160		809 KAR 010:003

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	809 KAR 010:003	281.010	907 KAR 003:066
	809 KAR 010:004	281.605	907 KAR 003:066
	809 KAR 010:004	281.635	907 KAR 003:066
	809 KAR 010:005	281.872	907 KAR 003:066
	809 KAR 010:006	281.875	907 KAR 003:066
	809 KAR 010:006	292.330	808 KAR 010:501
	809 KAR 010:007	292.410	808 KAR 010:501
	809 KAR 010:008	292.411	808 KAR 010:501
230.210	810 KAR 004:001	292.412	808 KAR 010:501
230.215	810 KAR 002:020	301	201 KAR 016:550
	810 KAR 002:070	302.32	921 KAR 001:420
	810 KAR 003:010	302.38	921 KAR 001:420
	810 KAR 004:010	302.51 – 302.54	921 KAR 001:420
	810 KAR 004:030	303.72	921 KAR 001:420
	810 KAR 004:040	304.1-050	806 KAR 017:290
	810 KAR 004:070		806 KAR 017:590
230.240	810 KAR 002:020	304.2-100	806 KAR 017:290
	810 KAR 004:030	304.2-230	806 KAR 017:290
230.260	810 KAR 002:020	304.2-310	806 KAR 017:290
	810 KAR 002:070	304.9-020	806 KAR 009:400
	810 KAR 002:100		806 KAR 017:590
	810 KAR 003:010	304.9-055	806 KAR 017:590
	810 KAR 004:030	304.9-430	806 KAR 009:400
	810 KAR 004:040	304.9-433	806 KAR 009:400
	810 KAR 004:070	304.9-435	806 KAR 009:400
230.280	810 KAR 003:010	304.9-440	806 KAR 009:400
230.290	810 KAR 003:010	304.14-135	900 KAR 007:030
	810 KAR 004:030	304.17A-005	806 KAR 017:290
230.300	810 KAR 003:010	304.17A-1631	806 KAR 017:290
230.310	810 KAR 004:030	304.17A-168	806 KAR 017:290
230.320	810 KAR 004:030	304.17A-505	806 KAR 017:290
230.811	810 KAR 003:010	304.17A-535	806 KAR 017:290
230.817	810 KAR 003:010	304.17A-600	806 KAR 017:290
237.110	301 KAR 002:172	304.17A-607	806 KAR 017:290
	921 KAR 001:410	304.17A-617	806 KAR 017:290
246.030	302 KAR 022:150	304.17A-621 – 304.17A-631	806 KAR 017:290
	302 KAR 045:020	304.17A-732	806 KAR 017:590
246.650	302 KAR 045:020		907 KAR 015:005
246.660	302 KAR 045:020	309.080	908 KAR 002:300
246.990	302 KAR 045:020	309.130	907 KAR 015:005
247.232	302 KAR 016:020		908 KAR 002:300
	302 KAR 016:030	309.460	907 KAR 003:310
247.233	302 KAR 016:072	309.462	907 KAR 003:310
	302 KAR 016:111	309.464	907 KAR 003:310
247.234	301 KAR 001:410	310.021	902 KAR 020:036
	302 KAR 016:020		902 KAR 020:048
	302 KAR 016:030	310.031	902 KAR 020:036
	302 KAR 016:050		902 KAR 020:048
247.236	302 KAR 016:020		902 KAR 020:086
	302 KAR 016:030	311	201 KAR 027:008
251.355	302 KAR 033:010	311.571	908 KAR 002:300
251.375	302 KAR 033:010	311.592	201 KAR 009:067
251.380	302 KAR 033:010	311.646	922 KAR 002:100
251.470	302 KAR 033:010	311.840	907 KAR 015:005
251.990	302 KAR 033:010	311.840 – 311.862	908 KAR 002:300
257.020	302 KAR 022:150	311A.025	202 KAR 007:410
257.030	302 KAR 022:150	311A.030	202 KAR 007:550
257.080	201 KAR 016:701		202 KAR 007:555
	302 KAR 022:150	311A.050 – 311A.100	202 KAR 007:410
257.160	201 KAR 016:560	311A.120 – 311A.135	202 KAR 007:410
257.990	302 KAR 022:150	311A.142	202 KAR 007:410
258	201 KAR 016:550	311A.145	202 KAR 007:030
258.043	201 KAR 016:701	311A.170	202 KAR 007:410
258.065	201 KAR 016:701	311A.180	202 KAR 007:550
260.020	302 KAR 045:020	311A.185	202 KAR 007:410
260.030	302 KAR 045:020	311A.190	202 KAR 007:410
260.850	902 KAR 045:190E		202 KAR 007:550
273	922 KAR 001:580		202 KAR 007:555
273.2	921 KAR 003:095	311.595	201 KAR 009:067
273.10	921 KAR 003:095	311.599	201 KAR 009:067
278.700-716	401 KAR 103:005	311.720	922 KAR 001:495
	401 KAR 103:010	311.840	922 KAR 001:495
	401 KAR 103:020	314.011	201 KAR 020:056
	401 KAR 103:030		201 KAR 020:057

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	201 KAR 020:065		201 KAR 002:205
	201 KAR 020:067		201 KAR 002:225
	201 KAR 020:215		201 KAR 002:320
	201 KAR 020:220		201 KAR 002:340
	902 KAR 020:036		201 KAR 002:390
	907 KAR 015:005	315.300	201 KAR 002:205
	922 KAR 002:100	315.335	201 KAR 002:205
314.011	922 KAR 001:495	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 010:001
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
	201 KAR 002:050		201 KAR 016:750
	201 KAR 002:076		201 KAR 016:512

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321.442	201 KAR 016:512	400.203	907 KAR 001:044
321.443	201 KAR 016:702	403.270 – 403.355	922 KAR 001:145
	201 KAR 016:750		922 KAR 001:565
325.240	201 KAR 001:200	405.024	922 KAR 001:565
325.261	201 KAR 001:190	405.060	921 KAR 001:410
325.270	201 KAR 001:190	405.520	921 KAR 001:420
327.040	201 KAR 022:053	407.5101	921 KAR 001:420
327.070	201 KAR 022:053	415.208	907 KAR 001:044
327.300	201 KAR 022:170	422.317	907 KAR 001:044
333.030	902 KAR 020:048	424.260	702 KAR 003:340
335B	201 KAR 016:560	431	907 KAR 001:044
	201 KAR 036:070	431.17	907 KAR 001:044
	201 KAR 036:072	431.52	907 KAR 001:044
335.070	201 KAR 023:055	431.213 – 431.270	501 KAR 045:310
335.080	201 KAR 023:160	434.840 – 434.860	907 KAR 001:044
	907 KAR 015:005	438.305	902 KAR 045:190E
	908 KAR 002:300	439.265	505 KAR 001:420
335.090	201 KAR 023:160	439.267	505 KAR 001:420
335.100	201 KAR 023:160	439.600	505 KAR 001:310
	907 KAR 015:005	446.440	202 KAR 007:410
	908 KAR 002:300	514	921 KAR 002:015
335.158	201 KAR 023:170	508.125	902 KAR 045:070
335.300	907 KAR 015:005	527.070	922 KAR 002:100
	908 KAR 002:300	527.100	922 KAR 001:140
335.500	907 KAR 015:005		922 KAR 001:565
	908 KAR 002:300	527.110	922 KAR 001:140
	201 KAR 036:005		922 KAR 001:565
	201 KAR 036:060	600 – 645	505 KAR 001:100
	201 KAR 036:065		505 KAR 001:110
	201 KAR 036:070		505 KAR 001:185
335.500 – 335.599	201 KAR 036:030		505 KAR 001:200
335.505	201 KAR 036:045		505 KAR 001:240
	201 KAR 036:060		505 KAR 001:250
	201 KAR 036:065		505 KAR 001:260
335.515	201 KAR 036:072		505 KAR 001:270
	201 KAR 036:090		505 KAR 001:280
335.525	201 KAR 036:060		505 KAR 001:290
	201 KAR 036:065		505 KAR 001:300
	201 KAR 036:070		505 KAR 001:310
335.527	201 KAR 036:070		505 KAR 001:320
335.535	201 KAR 036:005		505 KAR 001:330
	201 KAR 036:072		505 KAR 001:340
	201 KAR 036:075		505 KAR 001:350
	201 KAR 036:535		505 KAR 001:360
335.540	201 KAR 036:040		505 KAR 001:370
	201 KAR 036:050		505 KAR 001:380
335.545	201 KAR 036:050		505 KAR 001:390
	201 KAR 036:090		505 KAR 001:400
	201 KAR 036:090		505 KAR 001:410
342.640	902 KAR 020:500		505 KAR 001:420
344.010	104 KAR 001:080	600.020	922 KAR 001:140
344.010 – 344.500	104 KAR 001:050		922 KAR 001:145
344.030	101 KAR 001:365		922 KAR 001:360
344.040	104 KAR 001:040		922 KAR 001:495
344.050	104 KAR 001:040		922 KAR 001:565
	104 KAR 001:100		922 KAR 001:580
344.060	104 KAR 001:040	605.100	922 KAR 001:145
	104 KAR 001:100	605.110	505 KAR 001:260
344.070	104 KAR 001:040	605.120	922 KAR 001:565
344.120	104 KAR 001:100	605.130	922 KAR 001:145
344.130	104 KAR 001:100	610.110	922 KAR 001:140
344.190	104 KAR 001:010		922 KAR 001:565
344.360 – 344.385	104 KAR 001:080	610.110	922 KAR 001:145
344.500	104 KAR 001:100	610.125	922 KAR 001:140
344.600 – 344.680	104 KAR 001:080		922 KAR 001:145
344.990	104 KAR 001:050	610.127	922 KAR 001:140
363.610	302 KAR 045:020	620.020	201 KAR 020:215
363.900 – 363.908	302 KAR 016:071		201 KAR 020:620
369.101 – 369.120	907 KAR 001:044		922 KAR 001:360
387	922 KAR 001:565		922 KAR 002:100
387.010	902 KAR 045:065	620.010	922 KAR 001:140
	905 KAR 045:070	620.020	922 KAR 001:565
387.025	922 KAR 001:140	620.020	922 KAR 002:100
387.540	922 KAR 005:070		922 KAR 001:580

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620.030	902 KAR 020:086		401 KAR 045:030
	922 KAR 002:100	7 U.S.C.	921 KAR 003:020
620.045	922 KAR 001:580		401 KAR 045:100
620.050	922 KAR 001:580		921 KAR 003:027
620.060	922 KAR 001:140	10 U.S.C.	106 KAR 004:020
620.090	922 KAR 001:140	15 U.S.C.	201 KAR 027:008
	922 KAR 001:145		201 KAR 027:011
	922 KAR 001:565		921 KAR 001:410
620.140	922 KAR 001:140	16 U.S.C.	401 KAR 045:030
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			030 KAR 010:070
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
002 KAR 002:010	06-27-2023	Remain in Effect without Amendment
002 KAR 002:020	06-27-2023	Remain in Effect without Amendment
002 KAR 002:040	06-27-2023	Remain in Effect without Amendment
002 KAR 002:050	06-27-2023	Remain in Effect without Amendment
002 KAR 002:060	06-27-2023	Remain in Effect without Amendment
002 KAR 002:070	06-27-2023	Remain in Effect without Amendment
013 KAR 002:060	11-20-2023	Remain in Effect without Amendment
103 KAR 008:160	11-13-2023	Remain in Effect without Amendment
106 KAR 001:131	12-01-2023	Shall be Amended; Filing deadline 06-01-2025
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).

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201 KAR 020:360	11-21-2023		
201 KAR 020:390	11-21-2023		
201 KAR 020:411	11-21-2023		
201 KAR 020:472	11-21-2023		
201 KAR 020:476	11-21-2023		
201 KAR 020:490	11-21-2023		
201 KAR 020:506	11-21-2023		
201 KAR 020:600	11-21-2023		
201 KAR 020:620	11-21-2023		
201 KAR 020:660	11-21-2023		
201 KAR 020:670	11-21-2023		
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		

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